

EXHIBIT 114

SCHNADER HARRISON SEGAL & LEWIS LLP
 ONE MONTGOMERY STREET, SUITE 2200
 SAN FRANCISCO, CALIFORNIA 94104-5501
 TELEPHONE: 415-364-6700
 FACSIMILE: 415-364-6785

177 PAGES

Gregory C. Nuti (CSBN151754)
 E-Mail: gnuti@schnader.com
 Kevin W. Coleman (CSBN 168538)
 E-Mail: kcoleman@schnader.com
 Natalie Bush-Lents (CSBN 253124)
 E-Mail: nbush-lents@schnader.com
 SCHNADER HARRISON SEGAL & LEWIS LLP
 One Montgomery Street, Suite 2200
 San Francisco, California 94104-5501
 Telephone: 415-364-6700
 Facsimile: 415-364-6785

Attorneys for
 Chapter 11 Trustee, Bradley D. Sharp

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION

IN RE:) **Case No. 09-29162-D-11**
)
 SK FOODS, L.P., A CALIFORNIA LIMITED) **Chapter 11**
 PARTNERSHIP,)
)
 DEBTOR.)

BRADLEY D. SHARP, et al.,) **Adv. Pro. No. 11-2337**
)
 Plaintiff,) **DC No. SH-1**
)
 vs.)

SKPM CORP., INC., SSC & L 2007 TRUST,) **DECLARATION OF GREGORY C.**
 MONTEREY PENINSULA FARMS, LLC,) **NUTI IN SUPPORT OF *EX PARTE***
 FREDRICK SCOTT SALYER AKA SCOTT) **MOTION FOR A TEMPORARY**
 SALYER IN HIS CAPACITY AS TRUSTEE) **RESTRAINING ORDER AND ORDER**
 OF THE SCOTT SALYER REVOCABLE) **TO SHOW CAUSE RE PRELIMINARY**
 TRUST AND TRUSTEE OF THE SSC&L 2007) **INJUNCTION**

TRUST, SCOTT SALYER REVOCABLE) **Date: September 1, 2011**
 TRUST, FAST FALCON, LLC, HENRY JOHN) **Time: 10:00 a.m.**
 HEATH, AND DOES 1-5,) **Place: Courtroom 34**
) **501 I Street, 6th Floor**
) **Sacramento, CA 95814**

Defendants.) **Judge: Hon. Robert S. Bardwil**
)

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NUTI DECLARATION ISO EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
 RE PRELIMINARY INJUNCTION

SCHNADER HARRISON SEGAL & LEWIS LLP
 ONE MONTGOMERY STREET, SUITE 2200
 SAN FRANCISCO, CALIFORNIA 94104-5501
 TELEPHONE: 415-364-6700
 FACSIMILE: 415-364-6785

I, Gregory C. Nuti, declare as follows:

1. I am an attorney at law and duly licensed to practice before all of the courts in the state of California. I am a partner with the law firm of Schnader Harrison Segal & Lewis LLP, counsel of record in this action for Bradley D. Sharp (the “Trustee”), the duly appointed and acting chapter 11 trustee for the estate of SK Foods, L.P. (“SK Foods”) and RHM Industrial/Specialty Foods, Inc. (“RHM”, and collectively, the “Debtors”). Except as otherwise noted, I have personal knowledge of the facts set forth in this Declaration, and, if called as a witness, could and would testify competently to such facts under oath.

2. I submit this declaration in support of the Trustee’s *Ex Parte* Motion for a Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction.

EVIDENCE RELATING TO IRREPARABLE HARM

Violation of the Drum Line Injunction

3. The Trustee is concerned that without, at a minimum, a preliminary injunction and a receiver, Salyer and his cohorts will dissipate the assets subject to these proceedings at their earliest opportunity. They have already exhibited a willingness to defy this Court’s orders on numerous occasions.

4. On May 9, 2011, the Court issued its Memorandum Decision in *Sharp v. CSSS, L.P.*, adversary proceeding no. 09-2543 (“Drum Line Action”) denying a motion for summary judgment on the Trustee’s contempt motion against Larry Lichtenegger (the “Memorandum Decision”). As the Court and parties are well aware, the contempt proceedings involve the shipment of the so-called Drum Line to New Zealand in violation of this Court’s temporary restraining order and preliminary injunction issued in the Drum Line Action. I request that the Court take judicial notice of the Memorandum Decision, attached hereto as **Exhibit 1**.

5. On August 24, 2009, this Court issued its order restraining and prohibiting movement of the Drum Line outside of California. Memorandum Decision, p. 2, lines 13-17. “It is undisputed that on August 24, 2009, the day of the [TRO] hearing, the drum line was in the Port of Oakland awaiting documentation that would allow it to be exported, and it did not leave the Port of Oakland for New Zealand until a week later, August 31.” *Id.*, p. 2, lines 17-21. Thus,

1 this Court has already determined its orders have been violated; the only thing left to do is to
 2 specifically identify the parties responsible and their level of culpability. Obviously, those
 3 potentially responsible include Scott Salyer, Cary Collins and others. These are some of the
 4 people acting for the Farming Entities and Fast Falcon.

5 **Violations of the Substantive Consolidation and Quiet Title Injunction**

6 **False Accountings and Unauthorized Payments**

7 6. In March 2010, this Court also issued an injunction prohibiting various Salyer
 8 related entities ("Farming Entities") from disposing or dissipating their assets in connection with
 9 the Trustee's complaints for substantive consolidation and quiet title. The parties stipulated in
 10 October 2010 to allow one of the Farming Entities, SSC Farming, to sell a piece of land on the
 11 condition that the sale proceeds would be held in an account subject to the injunction¹. The
 12 injunction further provided that SSC could pay only certain specifically identified operating
 13 expenses and required SSC to provide an accounting for any such payments. I understand from
 14 my dealings with opposing counsel Cary Collins prepared the accounting and wrote the checks.
 15 I am also informed that Cary Collins is "involved in assisting Mr. Salyer with legal
 16 representation on behalf of Mr. Salyer and his entities." Attached as **Exhibit 2** is a copy of
 17 correspondence from Collins' Australian counsel to the Trustee's Australian counsel. Robert
 18 Pruett signed the checks for SSC Farming.

19 7. The accounting for the period of October 2010 through December 31, 2010 failed
 20 to disclose the first three payments made to Collins & Associates totaling \$353,000.00. The
 21 ending balance for December 31, 2010 was falsified to overstate the account balances to further
 22 conceal the payments. They did not contemporaneously provide the bank records so we were
 23
 24

25 ¹ The injunction has been modified by agreement on several occasions. First, it was
 26 modified to allow the sale of the land. It was further modified pursuant to the District
 27 Court's order on remand to allow the Farming Entities to pay their counsel. Because SSC
 28 was the only entity with liquid assets, only SSC's counsel could receive payments. Finally, we further agreed to allow the Farming Entities to lease portions of their land to be farmed, with the rental proceeds becoming subject to the injunction.

SCHNADER HARRISON SEGAL & LEWIS LLP
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1 unable to immediately compare the accounting to the bank statements. This accounting further
 2 misidentified a \$15,000 payment to Scott Salyer as fees paid to the "Farm Manager."

3 8. On January 24, 2011, it appears Cary Collins deposited \$353,000.00 into the
 4 account to cover the earlier violations. At the time, we were negotiating with Salyer over various
 5 issues, including the payment of attorneys' fees from the sale proceeds and to allow the Farming
 6 Entities to lease a portion of their remaining land to Eric Mireles. In conjunction with these
 7 negotiations, we pressed our demands for a full accounting of the funds, which I assume
 8 prompted the reimbursement. We received the accounting for January 2011 in early February
 9 2011; it failed to disclose the deposit.

10 9. On February 2, 2011, Collins, Pruett, et. al. paid two checks to Collins &
 11 Associates totaling \$461,969. In early March 2011, when they provided us the accounting for
 12 February 2011, they misidentified these payments as going to Gary Perry for legal fees. On
 13 March 11, 2011, I wrote to Van Durrer, another of the attorneys representing Scott Salyer in
 14 these proceedings, questioning the authority for the Payments, asking for evidence in support
 15 thereof, and demanding return of the Payments pending receipt of such evidence. Attached as
 16 **Exhibit 3** is a copy of my letter.

17 10. On March 15, 2011, Mr. Durrer responded, wherein he agreed that the Payments
 18 would be reversed. Attached as **Exhibit 4** is a copy of Mr. Durrer's letter (redacted to eliminate
 19 unrelated settlement discussions).

20 11. On March 18, 2011, Mr. Durrer provided a deposit slip indicating that the
 21 Payments had been returned to SSC Farming's account. Mr. Durrer has never provided any
 22 evidence to support the Payments in the first instance. Attached as **Exhibit 5** is a copy of Mr.
 23 Durrer's e-mail and the deposit slip.

24 **Failure To Collect Amounts Owning From Eric Mireles, Nature Fresh Farms and**
 25 **Green Barn Farms**

26 12. On Friday, May 27, 2011, I was contacted by Warren Felger, an attorney
 27 representing a watermelon farmer, TD Farms. Mr. Felger informed me that his client, in early
 28 February 2011, obtained a sublease from Mr. Mireles for land subject to the Preliminary

SCHNADER HARRISON SEGAL & LEWIS LLP
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Injunction and has planted a watermelon crop on that land. However, upon further investigation, the farmer determined that Mr. Mireles does not have any rights to the sublet parcels. Mr. Mireles leases some of the land subject to the Preliminary Injunction, but not the land that he purported to sublet to the watermelon farmer. This issue came to light when the watermelon farmer applied for and was denied water rights based upon his defective title. Therefore, Mr. Felger's client is occupying the land without any authorization either under the Second Amended Injunction or from the Defendants who own the property, i.e. SSC Farms I and SSC Farms II. I was further informed that TD Farms paid rent in advance to Mireles in excess of \$250,000. We continue to investigate where these funds went.

13. Also on May 27, 2011, after my conversation with Mr. Felger, Todd Truitt contacted my partner, Michael Carlson, seeking a further modification of the Preliminary Injunction to increase the land leased to Eric Mireles to include the land already planted with the watermelon crop. I responded to Mr. Truitt requesting additional information, including what agreements were already in place and an accounting of the rental proceeds. Van Durrer, Mr. Truitt's colleague, responded that SSC Farms I and SSC Farms II had not entered into any agreements to lease the land, nor did they receive any funds, which was only a partial response to my inquiry. Attached as **Exhibit 6** is a true and correct copy of an e-mail regarding these communications.

14. Thereafter, we engaged in protracted negotiations with the Farming Entities' counsel and Mr. Felger over the terms of a lease between TD Farms and the Farming Entities. Although the parties appeared to have agreed upon acceptable lease terms, the Farming Entities ultimately failed to sign the lease.

15. Finally, the July Accounting provided on August 13, 2011 disclosed, among other issues to be raised when appropriate, that the Farming Entities had failed to collect any rent from Eric Mireles or his companies. Attached as **Exhibit 7** is a copy of my letter to the Farming Entities' counsel regarding this issue (with other issues redacted). On August 17, 2011, I received an e-mail from Dean Gloster of Farella Braun + Martell, LLP, new counsel for the Farming Entities, informing me that two separate sets of checks received from Mr. Mireles had

1 bounced, thus the Farming Entities had yet to receive payment. Attached as **Exhibit 8** is a true
 2 and correct copy of the e-mail (with discussion of other issues redacted). I have not received any
 3 update on the issue.

4 **Purported Transfer of Australian Equity to Monterey Peninsula Farming, LLC and**
 5 **Fast Falcon, LLC**

6 16. Through discovery produced by Cary Collins in the Chapter 15 proceedings, I
 7 obtained documents purporting to transfer interests in the stock of SK Foods Australia and New
 8 Zealand from SKPM Corporation, Inc. and the Scott Salyer Revocable Trust to Monterey
 9 Peninsula Farming effective January 17, 2009, and further purporting to transfer the stock from
 10 Monterey Peninsula Farming to Fast Falcon, LLC effective June 29, 2009 (the "Fast Falcon
 11 Transfer Documents"). Attached hereto as **Exhibit 9** is a true and correct copy of the Fast
 12 Falcon Transfer Documents.

13 **EVIDENCE RELATING TO SUCCESS ON THE MERITS**

14 17. On August 18, 2011, the Australian Liquidator took the 2004 exam of Dan Nutley
 15 of Moss Adams in the Chapter 15 recognition proceedings of the Australian Liquidation of
 16 Cedenco. Moss Adams prepared the Debtors' financial statements for the period ending June 30,
 17 2007, which is the first reporting period disclosing the purported transfer of the Cedenco Assets.
 18 Attached here to as **Exhibit 10** is a true and correct copy of the transcript of that examination
 19 including the deposition exhibits referenced in the excerpts below ("Nutley Depo").

20 18. As support for their claims that SK Foods transferred the Australian Assets, the
 21 Defendants rely upon the Debtors' audited financial statements for the period ending June 30, 2007
 22 prepared by Moss Adams. However, Moss Adams was never provided with any underlying legal
 23 documents evidencing a transfer on November 1, 2006, or at any other time. In preparing the audited
 24 financial statements, Moss Adams solely relied upon a management representation letter, discussions
 25 with SK Foods management and counsel, and journal entries generated by the Debtors:

26 Q Okay. If I could draw your attention to the second page [of deposition exhibit 20].

27 It's marked at the bottom page 2 of 3. About two-thirds of the way down, or a little past

28 halfway down, and I'll just read it, "Effective November 1, 2006, the company distributed

SCHNADER HARRISON SEGAL & LEWIS LLP
 ONE MONTGOMERY STREET, SUITE 2200
 SAN FRANCISCO, CALIFORNIA 94104-5501
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1 their investments in the New Zealand and Australia subsidiaries to the partners at the
 2 carrying value of the investments." Can you tell me what documents you reviewed to
 3 have an understanding of that statement?

4 A There were a series. I can't recollect the documents as I sit here today.

5 Q Well, let me perhaps use some categories. *Did you ever see legal transaction*
 6 *documents?*

7 A No.

8 Q Can you tell me the nature of what documents that you saw?

9 MR. PETERSEN: Objection. It's vague and ambiguous.

10 BY MR. CHRISTMAS:

11 Q You can answer.

12 A *I don't have a specific recollection of documents beyond the client representation*
 13 *letter that we received from the company and management.* Nutley Depo, pp. 27:line 9-
 14 28: line 7 (emphasis added).

15 19. Mr. Nutley further admits that the documentation of the purported transaction
 16 could not have been completed on November 1, 2006 and that he relied upon the client's
 17 representations:

18 Q With respect to the distribution of the partners of the ownership interest in the
 19 Cedenco entities, is it your understanding that as of November 1, 2006, there were
 20 written documents or there was an oral agreement?

21 MR. PETERSEN: Objection. No foundation, calls for speculation. It's vague and
 22 ambiguous.

23 THE WITNESS: My understanding is the transaction was effective November 1st. The
 24 time frame at which that conclusion decision was made, I don't remember.

25 BY MR. CHRISTMAS:

26 Q But isn't it a fact that the actual structure was still being discussed in the fall of 2007
 27 in the e-mails that we've seen?

28 A Yes.

SCHNADER HARRISON SEGAL & LEWIS LLP
 ONE MONTGOMERY STREET, SUITE 2200
 SAN FRANCISCO, CALIFORNIA 94104-5501
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1 Q So do you know when the actual date of the oral understanding, if that's what you
 2 believe it to be, occurred?

3 A No.

4 Q Did you ever see any signed transaction documents that confirmed the distribution of
 5 the ownership of the Cedenco entities?

6 A I saw the general entries that management prepared. I saw our client representation
 7 letter from management saying that the transaction was effective November 1st.

8 Q Is that the extent of what you saw to confirm the effectiveness of the transfer of the
 9 equity ownership?

10 A Yes.

11 Q Okay. And I'll ask you the same question with respect to the transfer of the debt. Are
 12 the only documents that you saw the client representation letter and the adjusted journal
 13 entries?

14 A Yes. You know, in terms of documents, the financial statements are documents, also,
 15 that discuss and disclose all of this. But in the sense I left them out, they're documents.
 16 Nutley Depo, pp. 69:line 4-70:line 9.

17 20. On August 16, 2011, the Australian Liquidator took the 2004 exam of Scott Dye
 18 of Stoughton Davidson in the Chapter 15 recognition proceedings of the Australian Liquidation
 19 of Cedenco. Stoughton Davidson prepared the Debtors' financial statements for the period
 20 ending June 30, 2008, which is the reporting period immediately after the Moss Adams report.
 21 Attached here to as **Exhibit 11** is a true and correct copy of the transcript of that examination
 22 ("Dye Depo").

23 21. According to Mr. Dye's testimony, Stoughton Davidson relied upon the Moss
 24 Adams report and did not review the underlying legal documents purporting to effectuate a
 25 transfer of the Cedenco Assets:

26 Q. Did you have occasion to review any of the underlying transaction documents that
 27 affected the change of the owner, of the alleged change in owner of the Australian and
 28 New Zealand companies?

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1 A. Are you referring to the legal documents that would have been drawn back in 2006 or
 2 '7 when this occurred?

3 Q. That's correct.

4 A. No, I have not.

5 Q. And similarly, the transaction that involved the intercompany debt with respects to
 6 the irrevocable trust that you're talking about, did you see any of the legal documents?

7 A. Not that I recall.

8 Dye Depo, p. 22, lines 4-17.

9 22. Later, upon examination by Kelly Woodruff, counsel for the Salyer Entities, Mr.
 10 Dye confirms they relied solely on Moss Adams' audit:

11 Mr. Dye, you are here testifying on behalf of Stoughton Davidson, correct?

12 A. That is correct.

13 Q. And as you sit here today, are you prepared to testify to the extent that Stoughton
 14 Davidson has any knowledge about the assignment, transfer, distribution or sale of any
 15 ownership interest in SK Foods Australia?

16 A. The only knowledge we have was that this is a transaction that occurred November
 17 1st, 2006, prior to our audit and, in fact, almost a full year prior to audit, was included in
 18 the audit prior to us, and we would not go back and look at documents and transactions
 19 that occurred in prior periods, particularly when they've been audited by a firm such as
 20 Moss Adams.

21 Q. Okay. Thank you. And are you, as you sit here today, prepared to testify on behalf of
 22 Stoughton Davidson about the transfer of shares or other ownership interests in SK Foods
 23 Australia, by SK Foods Limited Partnership, which is the California limited partnership
 24 that's in bankruptcy here, to the Scott Salyer revocable trust and SKPM corporation
 25 effective November 1, 2006?

26 MR. CHRISTMAS: Alleged transfer.

SCHNADER HARRISON SEGAL & LEWIS LLP
 ONE MONTGOMERY STREET, SUITE 2200
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 TELEPHONE: 415-364-6700
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1 THE WITNESS: Again, our only knowledge of that is from the prior year audit
 2 conducted by Moss Adams indicating that that transfer took place on November 1st,
 3 2006. We relied on Moss Adams' audit.

4 BY MS. WOODRUFF:

5 Q. And as you sit here today are you prepared to testify on behalf of Stoughton Davidson
 6 concerning any assignment, transfer, distribution or sale of any debt of SK Foods
 7 Australia owing to SK Foods Limited Partnership?

8 A. Again, any knowledge we have of that relates to the prior audit that we relied on.
 9 Dye Depo, pp. 50, line 6 – 51, line 11.

10 23. On August 15, 2011, the Australian Liquidator took the 2004 exam of Wayne
 11 Boos in the Chapter 15 recognition proceedings of the Australian Liquidation of Cedenco. Mr.
 12 Boos was SK Foods' and Salyer's tax accountant. Attached here to as **Exhibit 12** is a true and
 13 correct copy of the transcript of that examination, including deposition exhibit 104 which is
 14 referenced in the excerpt below ("Boos Depo").

15 24. Mr. Boos analyzed the tax aspects of the purported transfers. Boos Depo, p. 26,
 16 lines 1-17. Yet, he never saw the legal documents effecting the transaction:

17 BY MR. CHRISTMAS:

18 Q. But it appears that you asked Mr. McCormick --let's see. On Exhibit 104 you asked
 19 Mr. McCormick whether he had received anything from Moss Adams. Do you know
 20 what was being sought from Moss Adams?

21 A. I believe it's the signed documents for the transfer, the debt assignment agreement,
 22 and likely the distribution. I just don't think we ever received them.

23 Q. That was my next question, is whether or not those materials were ever received from
 24 Moss Adams, to your knowledge.

25 A. No, and I think this is like the last of this-- unless you're going to pull some more out
 26 I'm not aware of, I don't know where, but I think the last part of this, because Mark left,
 27 resigned, SK Foods shortly thereafter, and then SK filed for bankruptcy.

28 Boos Depo, pp. 111, lines 4-19.

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25. On August 17, 2011, the Australian Liquidator took the 2004 exam of Lisa Crist in the Chapter 15 recognition proceedings of the Australian Liquidation of Cedenco. Ms. Crist was Director of human resources and environmental health and safety for SK Foods. Attached here to as **Exhibit 13** is a true and correct copy of the transcript of that examination, including deposition exhibit 42 which is referred to in the excerpt below ("Crist Depo").

26. On March 28, 2008, unsigned execution copies of the 2008 Transfer Documents appear for the first time. They were e-mailed from Gary Perry's office to Lisa Crist. Crist Depo., p. 34-35. Crist does not recall why she received the 2008 Transfer Documents. *Id.* Shortly, thereafter Crist travelled to Australia and New Zealand from March 30 through April 8, 2008. *See* Sharp_CH15 000969, attached to the Declaration of Bradley D. Sharp, filed herewith. Although Scott was in Australia and New Zealand at the same time, it is clear that Crist did not have Salyer sign any documents during her trip:

Q. Did you ultimately obtain signatures of any documents that were in furtherance of this e-mail?

A. During this trip I don't believe that I was able to get Scott's signature. I think that he signed them when he was back in the U.S., whatever they were. I may have carried an envelope with the documents that Nick needed signed, but I don't remember Scott actually signing them during that trip. I think it was handled when he got back to the states.

Crist Depo, p. 41, lines 5-13.

27. On Thursday, August 25, 2011 at 2:40 PM, I sent an email to Dean Gloster of Farella Braun and Martel, requesting clarification regarding his letter to me (appended to the e-mail) whether his firm represents Fast Falcon LLC, as was indicated on the request for notice filed in Sharp v. SKPM Corp., adversary proceeding number 11-2337 and as indicated by other actions taken by his firm in various proceedings.. As of 6:00 PM on August 30, 2011, I have not received a response to the email. A true and correct copy of the email is attached hereto as **Exhibit 14**.

1 I declare under penalty of perjury under the laws of the United States of America and the
2 State of California that the foregoing is true and correct to the best of my knowledge and belief.

3 Executed this 30th day of August, 2011 in San Francisco, California.

4
5 /s/ Gregory C. Nuti

6 Gregory C. Nuti
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SCNADER HARRISON SEGAL & LEWIS LLP
ONE MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CALIFORNIA 94104-5501
TELEPHONE: 415-364-6700
FACSIMILE: 415-364-6785

EXHIBIT 14

EXHIBIT 1

(10)

POSTED ON WEBSITE
NOT FOR PUBLICATION

FILED
MAY - 9 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 09-29162-D-11
SK FOODS, L.P.,)	
)	
Debtor.)	
_____)	
BRADLEY D. SHARP, Chapter 11)	Adv. Pro. No. 09-2543-D
Trustee,)	
)	Docket Control No. BW-1
Plaintiff,)	
v.)	
CSSS, LP, a California limited)	DATE: April 27, 2011
partnership,)	TIME: 10:00 a.m.
)	DEPT: D
Defendant.)	
_____)	

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On January 20, 2010, Bradley D. Sharp, the plaintiff in this adversary proceeding and trustee in the underlying chapter 11¹ case of SK Foods, L.P. (the "trustee"), filed a motion for an order to show cause why the defendant CSSS, LP, dba Central Valley Shippers ("CVS"), Monterey Peninsula Farms LLC, Scott Salyer, Gerard Rose, and Larry Lichtenegger ("Lichtenegger")

1. Unless otherwise indicated, all Code, chapter, and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All Rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 should not be held in contempt for violation of a temporary
 2 restraining order and preliminary injunction issued earlier by
 3 this court (the "contempt motion"). On March 21, 2011,
 4 Lichtenegger filed a motion for summary judgment on the contempt
 5 motion, Docket Control No. BW-1 (the "Motion"). The Bank of
 6 Montreal ("BMO"), which has acquired the trustee's claims in this
 7 adversary proceeding by assignment, opposes the Motion. For the
 8 reasons set forth below, the court will deny the Motion.²

9 I. BACKGROUND

10 This adversary proceeding concerns certain items of
 11 equipment and machinery the parties refer to as a drum line and
 12 the events leading up to its being transported to New Zealand in
 13 August of 2009. On August 24, 2009, this court issued an order
 14 restraining and enjoining CVS, its officers, agents, servants,
 15 employees, and attorneys, and those in active concert or
 16 participation with them from moving the drum line to any location
 17 outside of California (the "TRO"). It is undisputed that on
 18 August 24, 2009, the day of the hearing, the drum line was in the
 19 Port of Oakland awaiting documentation that would allow it to be
 20 exported, and that it did not leave the Port of Oakland for New
 21 Zealand until a week later, August 31.

22 / / /

23 / / /

24
 25 2. In a tentative ruling issued prior to the hearing, the
 26 court expressed its view that the Motion was covered by the stay
 27 of proceedings issued by the district court. Lichtenegger's
 28 counsel argued at the hearing, as in the papers, that the Motion
 is not covered by the stay. Upon further consideration, the
 court finds that it can resolve the Motion without testimony of
 Scott Salyer or his criminal defense attorney.

II. ANALYSIS

A. Lichtenegger's Version of Events

Lichtenegger contends he "knew nothing about the Drum Line before [the trustee] applied for the TRO"³ and that he "had no involvement with any of [the] activities" by which the drum line was moved from the premises of CVS (in Selma, California), consigned to a carrier, and ultimately shipped to New Zealand. Memo, 1:14-2:2. The events of Friday, August 21, through Monday, August 24, 2009 are critical to the resolution of the Motion. Lichtenegger alleges this series of communications:

- The trustee's counsel called CVS's attorney, Gerard Rose, on Friday and told him he would be filing an application for a TRO and would be appearing on Monday, August 24, at 11:00 a.m. on the application.

- Rose was going to be on vacation on August 24 and asked Lichtenegger to make a special appearance on behalf of CVS to oppose the application. Lichtenegger said he would if he could resolve a scheduling conflict.

- Lichtenegger had a telephone conversation on Friday, August 21, with Rose and Malcolm Segal, criminal defense attorney for Scott Salyer, the principal of the debtor in this case, SK Foods, L.P., to discuss the TRO hearing, during which Segal informed Lichtenegger the drum line had already shipped -- on August 20.

/ / /

/ / /

3. Memorandum in Support of Larry J. Lichtenegger's Motion for Summary Judgment, filed March 21, 2011 ("Memo"), 1:13-14.

1 • At Rose's request, Lichtenegger called the trustee's
2 counsel and left the voicemail message quoted below.⁴

3 • Lichtenegger spoke later that afternoon with the trustee's
4 counsel, who "was very aggressive and refused to discuss the
5 situation with him," Memo, 6:10-11, and who immediately filed a
6 declaration that included a transcript of Lichtenegger's earlier
7 voicemail message.

8 • Lichtenegger decided by Monday morning, August 24, "not to
9 get involved," cancelled the Court Call appearance he had earlier
10 arranged, left a voicemail message for the trustee's counsel that
11 he would not be appearing, and did not appear at the hearing.

12 • Lichtenegger "had no involvement with the Drum Line or the
13 export process after the TRO issued."

14 In other words, according to Lichtenegger, his involvement
15 with the drum line was limited to his being asked to make a
16 single special appearance and ultimately declining to make that
17 appearance. "When [Lichtenegger] did not appear [at the
18 hearing], his engagement was at an end [BMO] produces no
19 evidence that Lichtenegger was asked (until weeks later) to
20 perform any other service for CVS."⁵

21 Lichtenegger purposefully refused to appear on
22 behalf of CVS the morning of the TRO hearing. He took
23 no further actions on behalf of CVS. [Note.] He chose
24 to remove himself from that association before the
injunction was even issued, and any facts linking him
with CVS after August 21 are so attenuated that it will

25 4. No one has suggested a reason why Rose did not make this
26 call himself if, as discussed below, Lichtenegger's role was to
be limited to making a special appearance at the hearing.

27 5. Reply Memorandum in Support of Larry Lichtenegger's
28 Motion for Summary Judgment, filed April 20, 2011 ("Reply"), 6:8-
10.

1 be impossible for [BMO] to show by clear and convincing
 2 evidence that Lichtenegger acted on behalf of CVS in
 any capacity.

3 Reply, 6:11-15, emphasis in original.

4 **B. Lichtenegger's Greater Involvement**

5 The court finds that Lichtenegger's involvement with Salyer,
 6 CVS, and/or the drum line, both before and after the TRO was
 7 issued, was nowhere near as circumscribed as he contends. First,
 8 on Friday, August 21, before the TRO hearing the following
 9 Monday, he left a message for the trustee's counsel advising that
 10 he had been asked to make a special appearance. However, rather
 11 than leaving it at that, he added, "I wanted to inform you that
 12 I've investigated and confirmed that the drums [sic] shipped on
 13 Thursday -- they are already gone. That makes your application
 14 for a TRO moot. You may have other issues, but not a TRO."⁶

15 With those words, Lichtenegger went well beyond actions that
 16 might be expected from someone whose role is limited to
 17 considering whether to make a special appearance. Quite the
 18 contrary, they went directly to the substance of the application
 19 for the TRO. They were clearly designed to convince the
 20 trustee's counsel that his application for a TRO was too late.
 21 In fact, had the trustee's counsel relied on those words, as
 22 Lichtenegger almost certainly intended him to, he might have
 23 foregone the hearing altogether and lost any chance of preventing
 24 the shipment of the drum line.⁷ Lichtenegger's present

25
 26 6. Larry J. Lichtenegger's Documentary Evidence in Support
 of Motion for Summary Judgment, filed March 21, 2011 ("LDE"), 70.

27 7. In fact, when the trustee's counsel returned his call
 28 later that day, Lichtenegger again said he understood the drum
 line had shipped the previous day and "requested that the hearing

1 contention -- that he did not represent any person or entity in
2 connection with the drum line -- appears disingenuous in light of
3 this language.

4 Next, it appears Lichtenegger did not have a firm basis on
5 which to "confirm" to the trustee's counsel that the drum line
6 had already shipped. He has testified he left the voicemail
7 message at 3:16 p.m. on Friday. BMO Exhibits, 000713. At 3:29
8 p.m. that day, he was copied with an e-mail from Segal to Salyer
9 stating, "I just spoke to Larry [Lichtenegger] and Gerard [Rose].
10 If the goods have already shipped, the TRO application is
11 mooted." BMO Exhibits, 000276, emphasis added. At 3:31 p.m.
12 that day, Lichtenegger e-mailed a single line to Salyer:
13 "Confirm drums shipped on Thursday?" Id., 000277. On Sunday,
14 August 23, Salyer e-mailed Lichtenegger, "Equipment does not ship
15 out until Wednesday earliest." Id., 000278. And seven minutes
16 later, "Departs Thursday." Id., 000280.⁸

17 Despite this new knowledge, which directly contradicted what
18 he had "confirmed" to the trustee's counsel, Lichtenegger
19 testified as follows on September 1, 2009, the day after the drum
20 line actually shipped, concerning his decision not to appear at
21 the August 24 hearing:

22 Over the weekend [August 22-23], I debated the
23 usefulness of my appearance in light of my conflict
24 with the deposition [the scheduling conflict referred

25 be continued as there was no longer an emergency." Exhibit
26 Appendix in Support of Plaintiff's Opposition to the Motion of
27 Larry Lichtenegger for Summary Judgment, filed April 13, 2011
28 ("BMO Exhibits"), 000713.

8. Lichtenegger did not submit these e-mails with the
Motion and made no mention of them; they were submitted by BMO in
its opposition. Lichtenegger does not deny receiving them.

1 to above], the non-schedule notification by Courtcall
2 [a call Friday afternoon informing him the TRO hearing
3 was not on calendar], and the fact that the drum line
4 had already shipped and the hearing was a non-event. I
5 decided that my appearance at the hearing, if in fact
one would occur, was useless as there was nothing I
could do to aid the court or any of the parties in this
dispute.

6 BMO Exhibits, 000713-714.

7 The court need not determine at this time Lichtenegger's
8 truthfulness in making that statement on September 1 in light of
9 Salyer's two e-mails to him on August 23. The court also need
10 not decide whether Lichtenegger's failure to correct his earlier
11 misinformation to the trustee's counsel -- misinformation he knew
12 the trustee's counsel had conveyed to the court in a declaration
13 -- gives rise to liability. Indeed, Lichtenegger contends, and
14 the court might later determine, that he was precluded by duties
15 to a client (although he claims he had none) or by the attorney-
16 client privilege from divulging the new information. For present
17 purposes, the court finds that these e-mails raise serious
18 questions about the credibility of Lichtenegger's present
19 contentions that his role was limited to deciding whether to make
20 a special appearance, and that as such, he could not have been
21 covered by the TRO.⁹

22 But Lichtenegger did not stop there. He did not, as he
23 contends, have "only one possible engagement -- to specially
24

25 9. The Salyer e-mails of August 23 also raise questions
26 about the credibility of Lichtenegger's present testimony that
27 "[a]t all times relevant to this motion, my only understanding
28 was that the drum line had been shipped from CVS's control and
the shipment could no longer be stopped." Declaration of Larry
J. Lichtenegger in Support of Motion for Summary Judgment, filed
March 21, 2011, 2:13-14.

1 appear at the hearing." Reply, 9:11-12. A series of e-mails on
2 August 24 and 25, 2009, among Salyer and various attorneys,
3 including Lichtenegger, leads to the conclusion that, far from
4 divorcing himself from the process and the players after the TRO
5 hearing, Lichtenegger remained very much involved.

6 Beginning on Monday, August 24, Salyer and a group of
7 attorneys, including Lichtenegger, exchanged a series of e-mails
8 in which it was suggested that Lichtenegger contact the attorney
9 for Olam, an entity that had by that time purchased the debtor's
10 business operations from the estate, and threaten to sue Olam if
11 it would not return certain property. Lichtenegger responded by
12 asking for the name and phone number of Olam's attorney. He
13 agreed with Putterman that they needed to think carefully about
14 their approach "because of the possible effect on the subcon
15 case" (presumably the trustee's substantive consolidation
16 action), LDE 196, and stated that he "wanted to be sure of entity
17 separation before [he] called [Olam's attorney]." Id.

18 Lichtenegger then expressed confusion about the drum line
19 versus certain "color sorters," stating,

20 I thought the drum line was shipped out already and was
21 the subject of the TRO on Monday. Could be just my
22 confusion. Help. Left a message for Scott [Salyer],
but he has not responded.¹⁰

23 Putterman's response was not to the point, and Lichtenegger
24 replied, "I'll find out." LDE 195.

25 For purposes of this Motion, the court need not determine
26 what person or entity Lichtenegger was representing in these
27

28 10. LDE, 195-196.


1 exchanges, whether these or other discussions or e-mails
2 concerned the drum line or something else, or whether
3 Lichtenegger played any role in the transfer of the drum line
4 after the TRO was issued. For present purposes, the court
5 concludes from these e-mails that Lichtenegger continued to play
6 some significant role with Salyer and/or his attorneys
7 immediately after the TRO was issued and before the drum line
8 actually left the Port of Oakland, a role he now attempts to
9 repudiate.

10 III. CONCLUSION

11 For the reasons discussed above, the court cannot conclude
12 that there are no genuine issues of material fact with respect to
13 Lichtenegger's role in the events leading up to the drum line
14 being shipped out of California. As a result, the court cannot
15 conclude that Lichtenegger is entitled to judgment on the
16 contempt motion as a matter of law. See Celotex v. Catrett, 477
17 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986).

18 For the reasons set forth above, the Motion will be denied.
19 The court will issue an appropriate order.

20 Dated: May 9, 2011


ROBERT S. BARDWIL

United States Bankruptcy Judge

CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, caused to be mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

Kevin Coleman
Michael Carlson
Schnader Harrison Segal & Lewis
One Montgomery Street, Suite 2200
San Francisco, CA 94104- 5501

Andrea Miller
Nageley Meredith & Miller
8001 Folsom Blvd., Suite 100
Sacramento, CA 95826

Paul Pascuzzi
Felderstein Fitzgerald
Willoughby & Pascuzzi
400 Capitol Mall, Suite 1450
Sacramento, CA 95814

James Banks
James Moses
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, CA 95814-2403

Bank of Montreal
c/o James Spiotto
Chapman and Cutler
111 W Monroe Street
Chicago, IL 60603

Marc Levinson
Orrick, Herrington & Sutcliffe
400 Capitol Mall
Sacramento, CA 95814

DATE: May 9, 2011



Deputy Clerk

EXHIBIT 2

sarvaasciappara/
lawyers

Our Ref: PRS 2111244

Your Ref:

25 August 2011

BY EMAIL

Ms Jill Milburn
Duncan Cotterill
Lawyers
Level 18, 39 Martin Place
SYDNEY NSW 2000

Email: j.milburn@duncancotterill.com

Dear Sirs

**Cary Collins ats Bradley Sharp re Cedenco JV Australia Pty Ltd (In Liquidation)
Federal Court at Sydney NSD 1068/2011**

We refer to your letter dated 23 August 2011.

We draw your attention to the following:

- On 15 July 2011 your client issued a motion in United States Bankruptcy Court Eastern District of California, Sacramento Division, Case Number 09/29162-D-11 and on the same day your client swore a declaration with exhibits in respect of that motion. We understand that the motion was listed for hearing on 17 August 2011.
- The submissions in the motion and the evidence of Mr Sharp in his declaration covers the same subject matter as your affidavit sworn 1 July 2011 in the within Federal Court Proceedings. This evidence also includes material that was not included in your evidence.
- The declaration of Sharp sworn 15 July 2011 further exhibits documents which includes documents marked 'Sharp_CH15' which we are instructed are from a production of documents made by your client on 9 May 2011 in response to a request for a production of documents by Sheahan and Lock. We have been sent from the United States some 6 folders of documents which constitute some but not all of this production. Many of the documents in this production cover the subject matter of your affidavit and include documents not exhibited to either your affidavit or the declaration of your client. Your client has been in possession of these

SARVAAS CIAPPARA ABN: 62 379 944 778

Level 20, 15 Castlereagh Street, Sydney NSW 2000

T: (02) 9221 1290 F: (02) 9221 1240 E: mail@sclaw.com.au

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BMO 001930

documents for some period of time and it is fair and reasonable that we have an opportunity to review these documents carefully before advising our client and preparing his evidence.

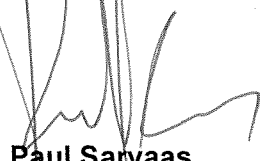
- Last week Mr Sheahan was in California at the hearing of depositions which included evidence in relation to some of the subject matter of your affidavit. Your client and his legal advisors were involved in these depositions. Our client was also involved in assisting Mr Salyer and with legal representation on behalf of Mr Salyer and his entities. This is the reason for the liquidators' delay in putting on evidence and it would be unfair for your client to take advantage of our client's involvement in the same procedure.
- Our client has made arrangements to travel to Australia in early September 2011 in order to meet with us personally and to provide instructions in relation to the documents outlined above and preparation of his evidence. In circumstances where your client has had the luxury of preparing the proceedings without time pressure and where our client is located overseas, it is not unreasonable for our client to have a small period of additional time to prepare his evidence.
- In addition, your affidavit deposes to your belief that our client engaged in conduct "*to help facilitate fraud*" (paragraph 16). This is a most serious allegation. Our client completely rejects this allegation. Without in any way conceding that your evidence in this regard is admissible, our client is entitled to meet with us in person in Australia to provide instructions and to receive advice.
- These proceedings involve the proof of debt lodged by our client. If our client's proof is upheld the only prejudice by reason of this delay would appear to be to our client in delay in receiving his outstanding fees.

In light of the above we request that you reconsider your position and consent to our client's proposal that he have until 9 September to file and serve his evidence.

In the event that your client does not consent and we are required to put on an affidavit in respect of the reasons for additional time our client reserves the right to tender this letter to the court and the to seek costs of and incidental to preparing that affidavit.

Yours faithfully

SARVAAS CIAPPARA



Paul Sarvaas

sarvaas@sclaw.com.au

CC: Ms Megan Walters
DMAW Lawyers
Level 3, 80 King William Street
ADELAIDE SA 5000

EXHIBIT 3

Schnader
ATTORNEYS AT LAW

ONE MONTGOMERY STREET SUITE 2200
SAN FRANCISCO, CA 94104-5501
415.364.6700 FAX 415.364.6785 schnader.com

March 11, 2011

Gregory C. Nuti
Direct Dial 415-364-6717
Direct Fax 415-364-6785

VIA E-MAIL AND FIRST-CLASS MAIL

Van C. Durrer II Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue
Los Angeles, CA 90071-3144

Re: In re SK Foods

Dear Van:

On March 7, 2011, we received the attached accounting from SSC Farming for January and February 2011 ("Accounting"). The Accounting discloses payments totaling over \$510,000 on account of "Gary Perry Legal Fees Per Court Order."

We assume that the Court Order referenced is Judge Bardwil's Amended Preliminary Injunction filed January 20, 2011 ("Amended Injunction"). As you know, Judge Bardwil issued the Amended Injunction in response to Judge Karlton's ruling on the appeal of the original Preliminary Injunction. Judge Karlton directed that the injunction should be modified to allow counsel for the non-debtor entities to receive payment for their fees. Judge Karlton was specific in his ruling that he "is in no way authorizing the payment of Salyer's attorneys' fees for his criminal defense with assets in the possession of non-debtor entities." Order dated December 9, 2010, footnote 1. Consistent with this notion, Judge Bardwil amended the Preliminary Injunction "to allow each defendant to pay reasonable attorney's fees and costs *for services rendered to that particular defendant in connection with this adversary proceeding and the bankruptcy case.*" Amended Injunction, ¶ 2 (emphasis added). This issue was thoroughly discussed by the parties both during negotiations and on the record at the hearing.

Prior to receiving the Accounting, we were not aware that Mr. Perry had been representing SSC Farming. He had not signed any pleadings in connection with the adversary proceedings. He has not made an appearance before either the Bankruptcy Court or the District Court in these matters. To my knowledge, he has not once spoken to anyone in my firm during the almost two (2) years these cases have been pending. Further, the Amended Injunction was a

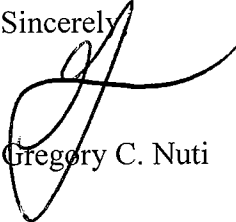
Van C. Durrer II Esq.
March 11, 2011
Page 2

product of lengthy litigation, including motion practice¹, numerous hearings and extensive negotiations among the parties. At no time during any of these proceedings was it disclosed that Mr. Perry was representing SSC Farming and would be seeking payment under the Modified Injunction. Finally, Mr. Perry received in excess of \$510,000, while SSC Farming's lead counsel, Nagely Meredith & Miller received \$347,000; a shocking disparity given the inconspicuous nature of Mr. Perry's purported representation. Under these circumstances the Trustee seriously questions whether the payments to Mr. Perry are authorized under the terms and spirit of the Modified Injunction.

Mr. Perry's purported representation of SSC Farming creates an additional issue in that any representation adverse to the Debtors creates a direct conflict. The Trustee has recently discovered that Mr. Perry represented both SK Foods and RHM for many years, extending at least through the date of the petition, on matters directly related to the issues raised in the adversary proceedings. Thus, Mr. Perry may be prohibited from receiving fees under any circumstances.

If Mr. Perry believes he has a legitimate claim for payment, the Trustee is willing to consider any such evidence. However, in the meantime the Trustee hereby demands that Mr. Perry immediately return to SSC Farming all payments received. If the funds are not returned by the close of business on Wednesday, March 16, 2011, the Trustee will seek an appropriate remedy from the Bankruptcy Court.

Sincerely



Gregory C. Nuti

GCN/ljb

cc: Bradley D. Sharp
Jamie Dreher, Esq.
James Spiotto, Esq.
Paul Pascuzzi, Esq.
Malcolm Segal, Esq.
James Keowen, Esq.
Kevin Coleman, Esq.

¹ Andy Miller's and Paul Pascuzzi's firms were the only parties seeking payment in the motions brought before Judge Bardwil.

EXHIBIT 4

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3144

TEL: (213) 687-5000

FAX: (213) 687-5600

www.skadden.com

DIRECT DIAL
(213) 687-5200
DIRECT FAX
(213) 621-5200
EMAIL ADDRESS
VAN.DURRER@SKADDEN.COM

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TOKYO
TORONTO
VIENNA

March 15, 2011

Gregory C. Nuti
Schnader Harrison Segal & Lewis LLP
One Montgomery Street, Suite 2200
San Francisco, CA 94104-5501

RE: In re SK Foods, Case No. 09-29162

Dear Greg:

I am writing in response to your March 11 letter regarding the referenced matter and the payment to Mr. Perry. As discussed with you on March 10, the day before you sent your letter, the payment to Mr. Perry is in the process of being reversed. I am advised that it will be re-deposited into the account containing the remaining Colusa sale proceeds by the end of this week. The reason for the delay is that the funds were deposited into an investment account and it takes a few days of logistics to re-direct the funds. We will provide written confirmation that this has occurred no later than the next regular accounting due to the Trustee, although I will make every effort to expedite such verification.

For the record, however, I wish to be clear concerning the reasoning behind reversing this payment. First, it is my view that tremendous progress has been made in these cases on several fronts; namely, parties are actually discussing issues rather than litigating every point, rational agreements are being struck on a recurring basis and the framework of a resolution to this case is actually written on a piece of paper. Second, I respect the Trustee's inquiry regarding this payment. I do wish to point out, however, that the absence of a signature on a pleading or an appearance in court would not be dispositive as to whether an attorney had rendered services to a defendant in connection with this bankruptcy case, within the meaning of the Amended Injunction.

Mr. Gregory C. Nuti
March 15, 2011
Page 2

That said, the payment has been reversed for the time being so that any discomfort would not become an insurmountable obstacle to continued progress. If any payment to Mr. Perry will be made in the future, we will sit down with you and explain it and provide supporting information as to how such payment would be consistent with the Amended Injunction. In the absence of an agreement, we will seek appropriate relief from the court. In sum, I am not in favor of tails wagging dogs—there has been too much of that in this case to date, as far as I can tell.

To that end, let this also confirm that the proposed Jacobo Management Agreement is acceptable, subject to our final review of the budget—that may take a day or so longer. We have leases with Mr. Mirales for review on the other parcels and will share them with the Trustee as soon as they are approved by Mr. Mirales. My understanding is that the Trustee is amenable to paying certain water charges in connection with the final approval of those leases, and we appreciate that.

REDACT

There has also been a suggestion that at least some depositions in the chapter 15 process take place so as to aid the parties in understanding the underlying facts as a preparation for a further mediation. These are all constructive ideas that should be pursued further. I think it would be useful to schedule a call to discuss.

Please let me know if that makes sense and when you might be available. Please do not hesitate to contact me if you have any questions.

Sincerely,

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP



Van C. Durrer II
Attorneys for Scott Salyer, individually and as
trustee of the Scott Salyer Revocable Trust

cc: Michael M. Carlson
Bradley D. Sharp
Jamie Dreher

641907.01-Los Angeles Server 2A - MSW

EXHIBIT 5

Nuti, Gregory

From: Durrer II, Van C [Van.Durrer@skadden.com]
Sent: Friday, March 18, 2011 4:18 PM
To: Barry, Linda; 'Sarah Head'
Cc: 'Bradley D. Sharp'; 'Jamie Dreher'; 'James E. Spiotto'; 'Paul Pascuzzi Esq.'; 'Malcolm Segal'; 'James C. Keowen'; Coleman, Kevin; Nuti, Gregory
Subject: RE: SK Foods (Case #09-29162)
Attachments: ltr to Judge McManus 3-15-11.PDF; 20110318161308334.pdf

All,

As Mr. Nuti promised in his letter attached, attached is also a receipt confirming that the funds have been redeposited, without prejudice.

Van

REDACT

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.



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ALL TRANSACTIONS ARE SUBJECT TO VERIFICATION AND THE TERMS AND CONDITIONS OF ACCOUNT
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL
TRANSACTION NUMBER, DATE AND AMOUNT OF DEPOSIT OR PAYMENT ARE SHOWN BELOW

Witness
0704 10 03/18/11 9015:45
DDA Deposit
Acct# 560165702 \$510,408.41

Thank you for banking with us.

THIS IS YOUR RECEIPT. PLEASE RETAIN UNTIL VERIFIED TO YOU BANK STATEMENT

EXHIBIT 6

Nuti, Gregory

From: Carlson, Michael M.
Sent: Tuesday, July 26, 2011 9:24 PM
To: Todd Truitt
Cc: Van C. Durrer II; Bradley Sharp; Nuti, Gregory
Subject: TDO lease

Todd,

Brad Sharp was contacted today by the principal of TDO. There is a serious chance that he will walk away from his investment if this deal doesn't close soon. That does not seem in anyone's interest and Brad would like to know the status. Let me know if I should be communicating with Mr Johns instead of you on this.

Best regards,

Mike Carlson

EXHIBIT 7

Schnader
ATTORNEYS AT LAW

ONE MONTGOMERY STREET SUITE 2200
SAN FRANCISCO, CA 94104-5501
415.364.6700 FAX 415.364.6785 schnader.com

August 15, 2011

Gregory C. Nuti
Direct Dial 415-364-6717
Direct Fax 415-364-6785
E-mail: gnuti@schnader.com

Mark D. Petersen
Farella Braun & Martel LLP
Russ Building
235 Montgomery Street
San Francisco, CA 94104

Re: ***SK Foods, L.P., In Re RHM Industrial/Specialty Foods, Inc.,***
U.S. Bankruptcy Court for the Eastern Dist. Of California
Case No. 09-29162, Chapter 11

Dear Mr. Petersen:

Thank you for the July Accountings for the Farming Entities, which you provided to Mike Carlson on August 13.

REDACT

The Accountings for SSC Farms I and SSC Farms II raise another issue, however, because both of those Accountings show a zero balance at July 1, 2011. It was our understanding that those accounts had a total of approximately \$34,000 in them.

The February 16, 2011 amendment to the Preliminary Injunction allowed SSC Farms I & II to lease land subject to the Preliminary Injunction (the "Leased Premises") to two entities owned by Eric Mireles (Green Barn Farms and Nature's Fresh Farms). *See* Stipulation and Order Further Modifying Preliminary Injunction, dated February 16, 2011, ¶ 4. The proceeds of those leases were subject to the Preliminary Injunction and were to be held in separate accounts by each lessor and not commingled with SSC Farming's Sales Proceeds. *Id.* Semi-annual rent was due under the leases on March 27 (three days after the lease was signed). *See* Master Lease of Agricultural Land Agreement between SSC Farms I and Nature's Fresh Farms, dated March 24, 2011, at ¶ 3; Master Lease of Agricultural Land Agreement between SSC Farms II and Green Barn Farms, dated March 24, 2011, at ¶ 3. For SSC Farms I, the rent due was \$12,492; for SSC

Schnader
ATTORNEYS AT LAW

Mark D. Petersen
August 15, 2011
Page 2

Farms II, the rent was \$21,975.48. *Id.* So, there should have been \$34,467.48 in these two entities accounts by March 27. We have never been given an accounting to show the expenditure of any of these funds, see February 16 Order ¶ 8; January 20 Order at ¶ 3, so we assumed they have not been spent. Could you please let us know what happened to this \$34,000?

Also, I note that both Accountings show returned checks from AG Wise, Inc., for Lease Payments. Given the amounts and the descriptions, I assume these are the second semi-annual payments due on July 31 from Mr. Mireles' two entities. I would appreciate it if you could confirm this.

Very truly yours,



Gregory C. Nuti

GCN/wr

EXHIBIT 8

Nuti, Gregory

From: DGloster@fbm.com
Sent: Wednesday, August 17, 2011 3:47 PM
To: Nuti, Gregory
Cc: MPetersen@fbm.com
Subject: SK Foods: Farming entity accounting
Attachments: Ltr to Farella dtd 8-15-11.pdf; 20110817150145916.pdf

Greg—

I'm responding to your attached August 15, 2011 letter to my partner Mark Petersen.

REDACT

I've asked our clients to verify the accounting (and I'll get you an update later this week if our current understanding is mistaken), but regarding your question about the account balance and tenant payments, our understanding is that Mr. Mireles did not make the original payments when due (and there was some difficulty because of the trustee's failure to approve payment to the water district.) After that, two sets of checks were bounced—the first set of two checks, and then a set of two replacement checks. So there was a zero balance in the account as of July 1, 2011, because Mireles had not actually paid the \$34,000. I'm new to the case and, again, I will confirm that this week, but payment was not received from Mr. Mireles's entities because the checks either were not actually delivered or bounced.

We will be in contact with Mr. Mireles's lawyer about getting replacement checks that would clear.

Dean M. Gloster
Attorney at Law

Farella Braun + Martel LLP
RUSS BUILDING
235 MONTGOMERY STREET
SAN FRANCISCO / CA 94104

EXHIBIT 9

BILL OF SALE
54.45% STOCK OF SK FOODS AUSTRALIA AND NZ

SKPM CORPORATION, INC., ("Seller"), for consideration of Five Hundred Forty Four Thousand Five Hundred Dollars and No Cents (\$544,500.00), the receipt of which is hereby acknowledged in the form of an installment note from MONTEREY PENINSULA FARMING, LLC ("Buyer") does sell, assign, transfer and convey and has delivered unto Buyer, and or its successors and assigns, all of Seller's rights, title and interests in and to that certain property as set forth below. SKPM Corporation and the Scott Salyer Revocable Trust, Scott Salyer, Trustee are each owners of SK Foods, LLC. Accordingly the subsidiaries discussed below have been consolidated for sale.

54.45% of the stock of the following foreign corporations:

SK Foods Australia Pty. Ltd. and related, subsidiary entities, and

SK Foods International (New Zealand) and related, subsidiary entities

Buyer understands that an investment in the Shares being transferred hereby ("Shares") is speculative and involves a high degree of risk, and that the Shares have not been registered or qualified under the Securities Act of 1933, as amended, the securities laws of the State of California or any other applicable blue sky laws, and that neither the Securities and Exchange Commission nor any other government office or agency have approved or disapproved the Shares or passed upon or endorsed the merits of the offering for sale of the Shares. Buyer represents and warrants that it (or its Trustee) is an experienced investor in unregistered and restricted securities of private companies and/or in closely held investments and companies; that it (or its Trustee) has such knowledge and experience in business and financial matters as to be capable of evaluating the merits and risks of an investment in the Shares; and that it has evaluated this investment in light of its experience and agrees that Buyer will accept the substantial risks of its investment in the Shares.

Buyer acknowledges that there are substantial restrictions on the transferability of the Shares, that there is no public market for the Shares and none is expected to develop, and that, accordingly, it may not be possible for him or her to liquidate his or her investment in the Company. Buyer is acquiring the Shares for investment purposes for its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Shares. Buyer has no contract, undertaking, agreement or arrangement to sell or otherwise transfer or dispose of the Shares or any portion thereof to any other person, and no other person will have any direct or indirect beneficial interest in or right to the Shares.

Buyer represents and warrants that it has: (a) made its own investigation of the Shares, including all matters pertaining to the value of the Shares, the Company, and the real and personal property owned by the Company, the assets and liabilities of the Company, the title to and physical condition of the Company's real property, and federal, state, county, and city laws, ordinances, rules and regulations affecting the ownership, leasing, and operation of the Company's property; (b) has not received or relied upon any representation or warranty of Seller concerning the condition or value of the Shares, the Company or the Company's property; and (c) had full opportunity to ask all questions of Seller and its agents and to review all documents and other relevant information concerning the Shares, the Company, and the Company's property that Buyer deems relevant in evaluating the risks of purchasing the Shares, and that all such questions and all such information have been fully and completely answered or made available to Buyer to its full satisfaction.

Buyer shall indemnify and hold harmless Seller and any of its employees, agents, attorneys, and registered representatives who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of or arising from any misrepresentation or misstatement of facts or

BILL OF SALE
54.45% STOCK OF SK FOODS AUSTRALIA AND NZ

omission to represent or state facts made by Buyer herein, against losses, liabilities, and expenses (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by the indemnified person in connection with that action, suit, or proceeding.

Seller denies and disclaims any express or implied representation or warranty concerning the value of the Shares or the operation, condition or value of the Company or the Company's property. Buyer accepts the Shares transferred hereby AS IS.

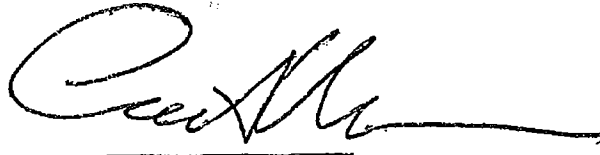
IN WITNESS WHEREOF, MONTEREY PENINSULA FARMING, LLC has executed this BILL OF SALE effective as of January 17, 2009.

SKPM CORPORATION, INC.:



ACCEPTED:

MONTEREY PENINSULA
FARMING, LLC:



BILL OF SALE
45.55% STOCK OF SK FOODS AUSTRALIA AND NZ

SCOTT SALYER REVOCABLE TRUST, SCOTT SALYER, TRUSTEE, ("Seller"), for consideration of Four Hundred Fifty Five Thousand Five Hundred Dollars and No Cents (\$455,500.00), the receipt of which is hereby acknowledged in the form of an installment note from MONTEREY PENINSULA FARMING, LLC ("Buyer") does sell, assign, transfer and convey and has delivered unto Buyer, and or its successors and assigns, all of Seller's rights, title and interests in and to that certain property as set forth below. SKPM Corporation and the Scott Salyer Revocable Trust, Scott Salyer, Trustee are each owners of SK Foods, LLC. Accordingly the subsidiaries discussed below have been consolidated for sale.

45.55% of the stock of the following foreign corporations:

SK Foods Australia Pty. Ltd. and related, subsidiary entities and

SK Foods International (New Zealand) and related, subsidiary entities

Buyer understands that an investment in the Shares being transferred hereby ("Shares") is speculative and involves a high degree of risk, and that the Shares have not been registered or qualified under the Securities Act of 1933, as amended, the securities laws of the State of California or any other applicable blue sky laws, and that neither the Securities and Exchange Commission nor any other government office or agency have approved or disapproved the Shares or passed upon or endorsed the merits of the offering for sale of the Shares. Buyer represents and warrants that it (or its Trustee) is an experienced investor in unregistered and restricted securities of private companies and/or in closely held investments and companies; that it (or its Trustee) has such knowledge and experience in business and financial matters as to be capable of evaluating the merits and risks of an investment in the Shares; and that it has evaluated this investment in light of its experience and agrees that Buyer will accept the substantial risks of its investment in the Shares.

Buyer acknowledges that there are substantial restrictions on the transferability of the Shares, that there is no public market for the Shares and none is expected to develop, and that, accordingly, it may not be possible for him or her to liquidate his or her investment in the Company. Buyer is acquiring the Shares for investment purposes for its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Shares. Buyer has no contract, undertaking, agreement or arrangement to sell or otherwise transfer or dispose of the Shares or any portion thereof to any other person, and no other person will have any direct or indirect beneficial interest in or right to the Shares.

Buyer represents and warrants that it has: (a) made its own investigation of the Shares, including all matters pertaining to the value of the Shares, the Company, and the real and personal property owned by the Company, the assets and liabilities of the Company, the title to and physical condition of the Company's real property, and federal, state, county, and city laws, ordinances, rules and regulations affecting the ownership, leasing, and operation of the Company's property; (b) has not received or relied upon any representation or warranty of Seller concerning the condition or value of the Shares, the Company or the Company's property; and (c) had full opportunity to ask all questions of Seller and its agents and to review all documents and other relevant information concerning the Shares, the Company, and the Company's property that Buyer deems relevant in evaluating the risks of purchasing the Shares, and that all such questions and all such information have been fully and completely answered or made available to Buyer to its full satisfaction.

Buyer shall indemnify and hold harmless Seller and any of its employees, agents, attorneys, and registered representatives who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative,

BILL OF SALE
45.55% STOCK OF SK FOODS AUSTRALIA AND NZ

or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by Buyer herein, against losses, liabilities, and expenses (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by the indemnified person in connection with that action, suit, or proceeding.

Seller denies and disclaims any express or implied representation or warranty concerning the value of the Shares or the operation, condition or value of the Company or the Company's property. Buyer accepts the Shares transferred hereby AS IS.

IN WITNESS WHEREOF, MONTEREY PENINSULA FARMING, LLC has executed this BILL OF SALE effective as of January 17, 2009.

SCOTT SALYER REVOCABLE:
TRUST, SCOTT SALYER,
TRUSTEE:

A handwritten signature in black ink, appearing to be "SS", written over a horizontal line.

ACCEPTED:

MONTEREY PENINSULA
FARMING, LLC:

A handwritten signature in black ink, appearing to be "C. M. H.", written over a horizontal line.

BILL OF SALE
MONTEREY PENINSULA FARMING, LLC
FOREIGN STOCK HOLDINGS
TO FAST FALCON, LLC

Monterey Peninsula Farms, LLC, ("Seller"), for consideration of One Million Dollars and No Cents (\$1,000,000.00), the receipt of which is hereby acknowledged in the form of an installment note from Fast Falcon, LLC ("Buyer") does sell, assign, transfer and convey and has delivered unto Buyer, and or its successors and assigns, all of Seller's rights, title and interests in and to that certain property as set forth below:

100.00% of the stock of the following foreign corporations:

SK Foods Australia Pty. Ltd. and related, subsidiary entities, and

SK Foods International (New Zealand) and related, subsidiary entities

Buyer understands that an investment in the LLC being transferred hereby ("Units") is speculative and involves a high degree of risk, and that the Units have not been registered or qualified under the Securities Act of 1933, as amended, the securities laws of the State of California, or any other applicable blue sky laws, and that neither the Securities and Exchange Commission nor any other government office or agency have approved or disapproved the Units or passed upon or endorsed the merits of the offering for sale of the Units. Buyer represents and warrants that it (or its Trustee) is an experienced investor in unregistered and restricted securities of private companies and/or in closely held investments and companies; that it (or its Trustee) has such knowledge and experience in business and financial matters as to be capable of evaluating the merits and risks of an investment in the Units; and that it has evaluated this investment in light of its experience and agrees that Buyer will accept the substantial risks of its investment in the Units.

Buyer acknowledges that there are substantial restrictions on the transferability of the Units, that there is no public market for the Units and none is expected to develop, and, accordingly, it may not be possible to liquidate the investment in the Company. Buyer is acquiring the Units for investment purposes for its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Units. Buyer has no contract, undertaking, agreement or arrangement to sell or otherwise transfer or dispose of the Units or any portion thereof to any other person, and no other person will have any direct or indirect beneficial interest in or right to the Units.

Buyer represents and warrants that it has: (a) made its own investigation of the Units, including all matters pertaining to the value of the Units, the Company, and the real and personal property owned by the Company, the assets and liabilities of the Company, the title to and physical condition of the Company's real property, and federal, state, county, and city laws, ordinances, rules and regulations affecting the ownership, leasing, and operation of the Company's property; (b) has not received or relied upon any representation or warranty of Seller concerning the condition or value of the Units, the Company or the Company's property; and (c) had full opportunity to ask all questions of Seller and its agents and to review all documents and other relevant information concerning the Units, the Company, and the Company's property that Buyer deems relevant in evaluating the risks of purchasing the Units, and that all such questions and all such information have been fully and completely answered or made available to Buyer to its full satisfaction.

Buyer shall indemnify and hold harmless Seller and any of its employees, agents, attorneys, and registered representatives who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by Buyer herein, against losses, liabilities, and expenses (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by the indemnified person in connection with that action, suit, or proceeding.

BILL OF SALE
MONTEREY PENINSULA FARMING, LLC
FOREIGN STOCK HOLDINGS
TO FAST FALCON, LLC

Seller denies and disclaims any express or implied representation or warranty concerning the value of the Units or the operation, condition or value of the Company or the Company's property. Buyer accepts the Units transferred hereby AS IS.

IN WITNESS WHEREOF, FAST FALCON, LLC has executed this BILL OF SALE effective as of JUNE 29, 2009.

MONTEREY PENINSULA
FARMS, LLC,
GERARD A. ROSE, TRUSTEE OF
THE CAROLINE G. SALYER 1999 TRUST
THE STEFANIE A. SALYER 1999 TRUST,
AS MEMBERS:

ACCEPTED:

FAST FALCON, LLC,
SCOTT SALYER,
MANAGER:

EXHIBIT 10

In The Matter Of:

In re: CEDENCO JV AUSTRALIA PTY LTD, et al.,

DAN NUTLEY - Vol. 1
August 18, 2011

MERRILL CORPORATION

LegalLink, Inc.

135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

DAN NUTLEY - 8/18/2011

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:

CEDENCO JV AUSTRALIA PTY LTD, et al.,
(In Liquidation),

Debtors in Foreign Proceedings.

DEPOSITION OF DAN NUTLEY
Sacramento, California
Thursday, August 18, 2011

Reported by:
JODI L. BOSETTI
CSR No. 11316, RPR
JOB No. 437324

DAN NUTLEY - 8/18/2011

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:

CEDENCO JV AUSTRALIA PTY LTD, et al.,
(In Liquidation),

Debtors in Foreign Proceedings.

Deposition of DAN NUTLEY, taken on behalf of
John Sheahan and Russell Lock, as Joint Liquidators of
the Debtors in Foreign Proceedings, at 400 Capitol
Mall, Suite 1800, Sacramento, California, beginning
at 9:30 a.m. and ending at 12:47 p.m., on Thursday,
August 18, 2011, before JODI L. BOSETTI, Certified
Shorthand Reporter No. 11316.

Page 4

APPEARANCES (Continued):

For Bank of Montreal:

CHAPMAN AND CUTLER LLP
BY: SCOTT A. LEWIS
Attorney at Law
111 West Monroe Street
Chicago, Illinois 60603-4080
(312) 845-3010
slewis@chapman.com
(Appeared telephonically)

For Deponent:

MOSS-ADAMS LLP
BY: SCOTT KALLANDER
Attorney at Law
999 Third Avenue, Suite 3300
Seattle, Washington 98104
(206) 302-6839
scott.kallander@mossadams.com

Also Present:

JOHN SHEAHAN

Page 3

APPEARANCES:

For John Sheahan and Ian Lock, as Joint Liquidators of
the Foreign Proceedings:

NIXON PEABODY LLP
BY: ROBERT N.H. CHRISTMAS
Attorney at Law
437 Madison Avenue, 18th Floor
New York, New York, 10022
(212) 940-3000
rchristmas@nixonpeabody.com

For the Non-Debtor Salyer Entities:

FARELLA BRAUN & MARTEL LLP
BY: MARK D. PETERSEN
Attorney at Law
235 Montgomery Street
San Francisco, California 94104
(415) 954-4400
mpetersen@fbm.com

For Brad Sharp, Chapter 11 Trustee of SK Foods:

SCHNADER HARRISON SEGAL & LEWIS LLP
BY: GREGORY C. NUTI
Attorney at Law
One Montgomery Street, Suite 2200
San Francisco, California 94104-5501
(415) 364-6717
gnuti@schnader.com

For Creditors Committee:

DOWNEY BRAND
BY: JAMIE P. DREHER
Attorney at Law
621 Capitol Mall, 18th Floor
Sacramento, California 95814
(916) 444-1000
jdreher@downeybrand.com

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DAN NUTLEY

BY MR. CHRISTMAS 8

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1 Sacramento, California, Thursday, August 18, 2011
2 9:30 a.m. - 12:47 p.m.
3

4 DAN NUTLEY,
5 having been administered an oath, was examined and
6 testified as follows:
7

8 EXAMINATION

9 BY MR. CHRISTMAS:

10 Q Good morning, Mr. Nutley. As I think you
11 know, my name is Robert Christmas. I'm with the law
12 firm Nixon Peabody. I represent the Chapter 15
13 liquidators -- or the liquidators in these Chapter 15
14 cases. I'm going to be asking you a series of
15 questions.

16 Just to set the table, have you ever been
17 deposed before?

18 A Yes.

19 Q So you understand, I think, the procedure.
20 You and I can't speak at the same time, otherwise the
21 court reporter will not be able to take us down.

22 The court reporter can't record nods or other
23 nonverbal communications, so you'll have to speak to
24 indicate your answer. If you don't understand my
25 questions at any time, obviously just say so.

Page 9

1 Are you taking any medications today that
2 would interfere with your ability to remember and
3 retell events.

4 A No.

5 Q And do you have any physical or mental
6 condition that interferes with your memory?

7 A No.

8 Q Can you tell me your address?

9 A Business address or personal address?

10 Q Sure, business address is fine.

11 A 3121 West March Lane, Suite 100, Stockton,
12 California 95219.

13 Q What post-high school degrees, if any, do you
14 possess?

15 A Bachelor of Arts degree from University of
16 the Pacific.

17 Q And what year did you receive that degree?

18 A 1972.

19 Q Okay. And do you have any professional
20 licenses?

21 A Yes.

22 Q And what are those?

23 A Certified public accountant in the State of
24 California.

25 Q So just briefly, since your graduation from

3 (Pages 6 to 9)

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DAN NUTLEY - 8/18/2011

<p style="text-align: right;">Page 10</p> <p>1 college, have you practiced as a CPA continuously 2 since that point in time? 3 A Yes. 4 Q And can you tell me what firms you have 5 practiced with and during what years? 6 A From 1976 through 1985 I was with the firm of 7 Fox & Company. 8 Q Where is that? 9 A Stockton, California. 10 Q Okay. 11 A From 1985 through 1999 I was with the firm of 12 Grant Thornton, and from 1999 through current, with 13 the firm of Moss-Adams. 14 Q '99 through the current date? 15 A Yes. 16 Q Okay. And what office of Grant Thornton did 17 you work? 18 A Stockton, California. 19 Q During the last five years is your practice 20 primarily as an auditor or are there other services 21 you provide, or could you describe that? 22 A Primarily as an auditor. 23 Q Do you recall when you first became 24 acquainted with the entities associated with the 25 Salyer family?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q An unqualified report, okay. 2 And what was your understanding of why the 3 company needed to have audited financial statements? 4 A For use of the banks. 5 Q And do you know the identity of the banks? 6 A Bank of Montreal. 7 Q And do you know that to be the sole bank or 8 was it a lead bank? 9 A I don't remember. 10 Q Okay. Are you familiar with the accounting 11 firm of Stout & Davidson? 12 A Yes. 13 Q I'll represent to you that on some of their 14 materials there is a logo that says part of the 15 Moss-Adams network or connection. Is that familiar to 16 you? 17 A Not their letterhead, no. 18 Q Is there an affiliation between accounting 19 firms that you're aware of that is connected to your 20 firm? 21 A No. Well, the affiliation is called Praxity. 22 Q How do you spell that? 23 A P-R-A-X-I-T-Y. 24 Q Okay. And what is the function of the 25 affiliation?</p>
<p style="text-align: right;">Page 11</p> <p>1 A No. 2 Q Do you recall the first engagement that your 3 firm had for any of the Salyer family interests? 4 A To audit the financial statements for SK 5 Foods for the year ending October 31st, 2006. 6 Q And were you the partner with whom the 7 relationship originated? 8 A Yes. 9 Q And how were you contacted to initiate the 10 engagement? 11 A We were contacted by the company to respond 12 to a request for a proposal. 13 Q They put out an RFP? 14 A I don't remember. 15 Q Okay. And who was your first contact? 16 A Stacy Alexander. 17 Q And do you recall her title? 18 A No. 19 Q And did your firm complete the audit for the 20 year ending October 31, 2006? 21 A Yes. 22 Q And did your firm issue unqualified financial 23 statements for that year? 24 A An unqualified report on the financial 25 statements.</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. PETERSEN: Objection. That's vague and 2 ambiguous. 3 BY MR. CHRISTMAS: 4 Q You can answer. 5 A It's when each of our firms would like to do 6 work in another region where we don't have offices. 7 We work with the firm in that region to provide the 8 services. 9 MR. CHRISTMAS: This is 3. 10 (Deposition Exhibit 1, Exhibit 2, and 11 Exhibit 3 marked.) 12 BY MR. CHRISTMAS: 13 Q Mr. Nutley, the court reporter has handed to 14 you Exhibit 3 to your deposition. Do you recognize 15 this document? 16 A No. 17 Q Have you ever seen this document? 18 A Not that I remember. 19 Q Okay. Were you aware that there was an 20 intercompany indebtedness -- well, withdrawn. I'll 21 rephrase it. 22 Are you familiar with the existence of 23 Australian and New Zealand direct or indirect 24 subsidiaries of SK Foods LP? 25 A Yes.</p>

4 (Pages 10 to 13)

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DAN NUTLEY - 8/18/2011

<p style="text-align: right;">Page 14</p> <p>1 Q And how did you come to learn of those 2 subsidiaries? 3 A In gaining an understanding of the ownership 4 structure of SK Foods. 5 Q From whom did you learn of their existence? 6 A I can't remember specifically. 7 Q Was there a reason why you needed to know 8 about those entities? 9 A Yes. 10 Q Can you tell me why? 11 A They were included in the consolidated 12 financial statements of SK Foods. 13 Q Before we get any further, let me just do a 14 little housekeeping. If you could turn to the other 15 exhibits that are before you, Mr. Nutley, Exhibits 1 16 and 2. The first has on the front the notice of 17 deposition, just indicating where this deposition is 18 taking place. 19 I want to draw your attention to the second 20 document as part of Exhibit 1 and also to Exhibit 2. 21 Just turn to Exhibit 1, to the third page in. That is 22 the subpoena, as well as the one on the other side, 23 which is also a subpoena. One is to you and one is to 24 your firm. 25 Have you seen these documents before?</p>	<p style="text-align: right;">Page 16</p> <p>1 file? 2 A Yes. 3 Q Okay. Where else did you look? 4 A E-mail records. 5 Q Okay. And was that done by manually looking 6 through people's e-mail and boxes or was there some 7 other method used? 8 A Manually. 9 Q And do you recall who the custodians of 10 e-mails were? 11 MR. PETERSEN: Objection. Vague as to time. 12 BY MR. CHRISTMAS: 13 Q Whose e-mail boxes did you look at? 14 A I looked at the e-mail boxes of each of the 15 persons involved in providing service to SK Foods. 16 Q And can you tell me who those individuals 17 were? 18 A I could come up with a couple of them. I'm 19 not sure, comprehensive at this moment, I can remember 20 all that I looked at. 21 Q Tell me what you remember. 22 A It would be Abigail Pike, Roger Kutz. 23 Q Okay. 24 A Eileen Jacobson. 25 Q Okay.</p>
<p style="text-align: right;">Page 15</p> <p>1 A Yes. 2 Q Have you reviewed them? 3 A Yes. 4 Q Okay. And is it your understanding that you 5 and your firm had an obligation to produce documents 6 responsive to those subpoenas? 7 MR. PETERSEN: Objection. Calls for a legal 8 conclusion. 9 BY MR. CHRISTMAS: 10 Q You can answer to your understanding. 11 THE WITNESS: Yes. 12 BY MR. CHRISTMAS: 13 Q Did you and your firm conduct searches for 14 documents responsive to the deposition? 15 A Yes. 16 Q And can you tell me what repository or 17 repository of documents you reviewed or if you 18 actually delegated it to be delegated and what 19 repositories they looked at? 20 A We looked at our system where we file client 21 records. 22 Q Okay. Is that a virtual system? Are these 23 scanned documents or is it hard copy? 24 A It's electronic documents. 25 Q So you looked in your electronic document</p>	<p style="text-align: right;">Page 17</p> <p>1 A And my own. 2 Q So we have the electronic records, the 3 e-mail, and in and out boxes. What other repositories 4 did you review? 5 A We have a limited number of paper files we 6 retain in connection with an audit, and I looked at 7 those. 8 Q And is that the extent of the repositories 9 you looked in? 10 A There would be senior auditors' e-mail files 11 I would have looked at and inquired of them, but I 12 don't recollect the specific names as I sit here. 13 Q And before the deposition commenced your 14 counsel handed me a document that had been located 15 after the initial production. 16 MR. CHRISTMAS: For counsel's knowledge, we're 17 using a bit of an unconventional exhibit-numbering 18 system. We'll call this Exhibit 54. If the court 19 reporter could mark it. 20 BY MR. CHRISTMAS: 21 Q And while we have it in front of us, I'll 22 just ask you, Mr. Nutley, do you recognize this 23 document? 24 A Yes. 25 Q Can you tell me what it is?</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1 A It's the transmittal of the signature page to 2 the client representation letter for the audit for the 3 eight months ending June 30th, 2007. 4 Q And it was transmitted -- do you have a 5 recollection of receiving it? 6 A Yes. 7 Q And do you know who the sender was by name? 8 A The name is on the page. I don't know the 9 person. 10 MR. CHRISTMAS: This is 7. 11 (Deposition Exhibit 7 marked.) 12 BY MR. CHRISTMAS: 13 Q Mr. Nutley, the court reporter has handed you 14 a document marked as Exhibit 7 to your deposition. It 15 appears to be a seven-page document. Can you identify 16 this document? 17 A It looks like one of our documents we used 18 for documenting understanding of a client that is 19 headed "Related to the October 31st, 2006 audit." 20 Q So is this a form of gathering information 21 prior to the audit? Is that what the purpose of this 22 document is? 23 A No. 24 Q Can you tell me the purpose? 25 A During the course of the audit.</p>	<p style="text-align: right;">Page 20</p> <p>1 at once. 2 (Deposition Exhibit 8, Exhibit 9, 3 Exhibit 10, Exhibit 11, and Exhibit 12 4 marked.) 5 BY MR. CHRISTMAS: 6 Q Mr. Nutley, the court reporter has handed you 7 a series of documents, and primarily I'm going to be 8 asking you whether you've seen these documents before. 9 First, if we could turn to Exhibit 8, the 10 document that has in its title "General Assignment and 11 Transfer of Shares of SK Foods Australia Proprietary 12 Limited." Have you ever seen this document? 13 A Not that I recollect. 14 Q Have you ever seen it in an unsigned version? 15 A Not that I can recollect. 16 Q Okay. You can set that document aside. We 17 can now turn to Exhibit 9. Have you ever seen this 18 document titled "Share Certificate"? 19 A Not that I can recollect. 20 Q Let's go to Exhibit 10. Have you ever seen 21 this document that is titled "Share Certificate"? 22 A Not that I can recollect. 23 Q Okay. And document 11, if you could turn to 24 that. Have you ever seen this document that is titled 25 "Standard Transfer Form"?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q And if I can draw your attention to the 2 paragraph right above the paragraph numbered 5 on 3 page 1. There's a reference there to FIN 46. In 4 layperson's terms, can you tell us what FIN 46 is, 5 just briefly. 6 A FIN 46 is an interpretation of accounting 7 standards relating to consolidation of entities into a 8 reporting entity. 9 Q The second sentence of that paragraph says, 10 and I'll just read it, "This will be the first 11 reporting year that FIN 46 applies to the company." 12 Do you know who made the determination that FIN 46 13 applied to SK Foods LP? 14 A No, not specifically. 15 Q Do you recall when FIN 46 became fully 16 effective? 17 A Not the specific date, no. 18 Q But you're aware that it was issued and then 19 had a transition period, if I'm understanding it 20 correctly? 21 A Yes. 22 Q Do you know when it became mandatory? 23 A It's been a while ago. No, not as I sit 24 here. 25 MR. CHRISTMAS: We'll just mark a bunch of these</p>	<p style="text-align: right;">Page 21</p> <p>1 A No, not that I can recollect. 2 (Deposition Exhibit 13 marked.) 3 BY MR. CHRISTMAS: 4 Q And if you could turn to Document 13. 5 A Yes. 6 Q Have you ever seen this document titled 7 "Standard Transfer Form"? 8 A No. 9 Q Oh, I think you had them reversed. 10 MR. PETERSEN: Robert, did you say 13? 11 MR. CHRISTMAS: 12. I meant to refer to 12. 12 THE WITNESS: Not that can I recollect. 13 BY MR. CHRISTMAS: 14 Q And 13? 15 A Not that I can recollect. 16 Q Are you aware of the existence of a 17 forbearance agreement between SK Foods and its 18 lenders? 19 A Not the specific agreement as I sit here 20 today. 21 Q Did you ever have reason to review that 22 agreement? 23 A I don't have a specific recollection of 24 reviewing it. 25 Q Would it refresh your recollection if I gave</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">Page 22</p> <p>1 you the effective date of the document as May 17, 2 2007?</p> <p>3 A No, that doesn't refresh my recollection. 4 MR. CHRISTMAS: Mark this as 15. 5 (Deposition Exhibit 15 marked.) 6 BY MR. CHRISTMAS: 7 Q Mr. Nutley, the court reporter has handed you 8 Exhibit 15 to your deposition. Do you recognize this 9 document? 10 A Yes. 11 Q Can you tell me what this document is? 12 A It is part of our work papers. 13 Q Okay. And what is the purpose of this 14 document? 15 A To -- page 1 or the first page of the 16 document is not numbered in the way that it's printed. 17 The first page of the document summarizes the source 18 of information for the related party footnote 19 disclosures. 20 Q And the second page? 21 A And the second page discloses the composition 22 of prepaids and journal entries that were posted that 23 led to some of the ending balances. 24 Q Okay. So if I understand your first answer, 25 the first page discloses the source of information?</p>	<p style="text-align: right;">Page 24</p> <p>1 to your attention that there were intercompany 2 receivables between the Australian and New Zealand 3 companies on the one hand and the U.S. company? 4 A Yes. 5 Q And can you tell me how that came to your 6 attention? 7 A As a part of the examination of the accounts. 8 Q And can you tell me what you recall about the 9 nature of the notes? Do you know anything about the 10 payors, in other words, which subsidiaries owed what 11 to whom? 12 A Not as I sit here today. 13 Q Do you recall what review was done, if any, 14 of the collectability of any of the intercompany 15 receivables? 16 A Yes. 17 Q Can you first identify which receivables were 18 reviewed for collectability? 19 A I've described them Cedenco receivables. 20 Q And can you tell me what procedures were 21 followed to verify their collectability? 22 A We looked at the underlying financial 23 statements of the related entities. 24 Q So these were financial statements prepared 25 of the payor companies?</p>
<p style="text-align: right;">Page 23</p> <p>1 A It -- yes, there are source references, yes. 2 Q Tell me where the source references are on 3 the page. 4 A On the left side of the page, under the 5 heading "Work Paper." 6 Q Okay. 7 MR. CHRISTMAS: This is 16. 8 (Deposition Exhibit 16 marked.) 9 BY MR. CHRISTMAS: 10 Q Mr. Nutley, the court reporter has handed you 11 Exhibit 16 to your deposition. Can you tell me what 12 this document is. 13 A This is one of our work papers accumulating 14 general ledger account groups into lead sheet 15 classifications. 16 Q Can you explain that for mere mortals? 17 A How you group the financial information to 18 roll up into the financial statement. 19 Q If I could draw your attention to the set of 20 figures that are under the heading "Group D, Notes 21 Receivable Related Party." Can you tell me what that 22 refers to, related party? 23 A That refers to receivables from related 24 parties. 25 Q In the course of the engagement, did it come</p>	<p style="text-align: right;">Page 25</p> <p>1 A Yes. 2 Q And, to your knowledge, they had their own 3 auditors? 4 A Yes. 5 Q Do you recall who those auditors were? 6 A Deloitte. 7 Q And I interrupted your answer. If you could 8 continue to explain the procedures that were followed. 9 A We need to discuss time frame -- 10 Q Okay. 11 A -- on these also, I think. 12 Q For the year ending 10-31-2006, let's talk 13 about that one first. Go ahead. 14 A Yeah. We acquired the financial statements 15 of the related entities. They were audited financial 16 statements. We reviewed those financial statements. 17 We acquired analysis from management of the company 18 regarding the subsidiaries. We acquired consolidating 19 work papers that included these amounts. 20 Q Was that from the prior auditor? 21 A From management of the company. Prepared the 22 consolidated work papers. And we traced those numbers 23 into consolidating the financials into the 24 consolidating work papers, reviewed the foreign 25 currency translation. That's what I recollect as I</p>

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<p style="text-align: right;">Page 26</p> <p>1 sit here.</p> <p>2 Q Can you explain what you mean by foreign</p> <p>3 currency translation?</p> <p>4 A The underlying financial statements of the</p> <p>5 Cedenco entities prepared in their local currencies</p> <p>6 that have to be translated into U.S. dollars for U.S.</p> <p>7 financial reporting.</p> <p>8 Q And would it be fair to say that is because</p> <p>9 the financial statements you were preparing were in</p> <p>10 U.S. dollars?</p> <p>11 A Yes.</p> <p>12 MR. CHRISTMAS: This is 17.</p> <p>13 (Deposition Exhibit 17 marked.)</p> <p>14 MR. CHRISTMAS: I'm going to set that document</p> <p>15 aside for the moment. I'm going to table that for a</p> <p>16 minute. Let's do Exhibit 20.</p> <p>17 (Deposition Exhibit 20 marked.)</p> <p>18 BY MR. CHRISTMAS:</p> <p>19 Q This is 20. Mr. Nutley, the court reporter</p> <p>20 has handed you Exhibit 20 to your deposition. Do you</p> <p>21 recognize this document?</p> <p>22 A Yes.</p> <p>23 Q Can you tell me what it is?</p> <p>24 A It's the engagement and review memo we</p> <p>25 prepare in the course of our audits.</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. PETERSEN: Objection. It's vague and</p> <p>2 ambiguous.</p> <p>3 BY MR. CHRISTMAS:</p> <p>4 Q You can answer.</p> <p>5 A I don't have a specific recollection of</p> <p>6 documents beyond the client representation letter that</p> <p>7 we received from the company and management.</p> <p>8 Q Did you ever receive any documents from a</p> <p>9 gentleman named Gary Perry?</p> <p>10 A There was an unsigned document that he</p> <p>11 provided me in the course of our discussions.</p> <p>12 Q Okay. Do you recall the nature of that</p> <p>13 document?</p> <p>14 A I believe it was a draft of a trust</p> <p>15 agreement.</p> <p>16 Q Do you know what trust it was to be for?</p> <p>17 A It was a revocable trust, is my recollection.</p> <p>18 Q And do you know if that trust ever became</p> <p>19 effective?</p> <p>20 A I never saw a signed document.</p> <p>21 Q Okay. But apart from seeing or not seeing a</p> <p>22 signed document, do you know if the trust became</p> <p>23 effective?</p> <p>24 A We have representations regarding the trust.</p> <p>25 Q Okay. Do you know the name of the trust?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q What is the date of this; do you know?</p> <p>2 A There are a number of dates on the memo.</p> <p>3 Q What is the significance of the dates at the</p> <p>4 end, next to the words "preparer, engagement review,"</p> <p>5 or concurring "reviewer"?</p> <p>6 A Those are the dates that each of the persons</p> <p>7 signed off their concurrence with the content of this</p> <p>8 memo.</p> <p>9 Q Okay. If I could draw your attention to the</p> <p>10 second page. It's marked at the bottom page 2 of 3.</p> <p>11 About two-thirds of the way down, or a little past</p> <p>12 halfway down, and I'll just read it, "Effective</p> <p>13 November 1, 2006, the company distributed their</p> <p>14 investments in the New Zealand and Australia</p> <p>15 subsidiaries to the partners at the carrying value of</p> <p>16 the investments."</p> <p>17 Can you tell me what documents you reviewed</p> <p>18 to have an understanding of that statement?</p> <p>19 A There were a series. I can't recollect the</p> <p>20 documents as I sit here today.</p> <p>21 Q Well, let me perhaps use some categories.</p> <p>22 Did you ever see legal transaction documents?</p> <p>23 A No.</p> <p>24 Q Can you tell me the nature of what documents</p> <p>25 that you saw?</p>	<p style="text-align: right;">Page 29</p> <p>1 A Not as I sit here.</p> <p>2 Q Do you recall if the name of the trust</p> <p>3 included the initials SSC&L, C ampersand L?</p> <p>4 A No, I do not.</p> <p>5 Q Do you recall a trust called the Scott Salyer</p> <p>6 revocable Trust?</p> <p>7 A Yes.</p> <p>8 Q Is that the trust to which you've been</p> <p>9 referring?</p> <p>10 A I don't remember the specific name of the</p> <p>11 trust I'm referring to.</p> <p>12 Q And moving to the second sentence of the</p> <p>13 paragraph that we were just looking at in Exhibit 20,</p> <p>14 the next sentence says, "In addition, the company sold</p> <p>15 receivables due from the subsidiaries to a revocable</p> <p>16 trust."</p> <p>17 And I'll ask you the same question about</p> <p>18 that. Did you ever see any documents that would</p> <p>19 support that statement?</p> <p>20 A Yes.</p> <p>21 Q Can you tell me what you saw?</p> <p>22 A A client representation letter.</p> <p>23 Q Did you ever see any underlying legal</p> <p>24 transactional documents that would effect -- in other</p> <p>25 words effect, e-f-f-e-c-t -- the transaction that is</p>

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<p style="text-align: right;">Page 30</p> <p>1 referred to in that sentence?</p> <p>2 MR. PETERSEN: Objection. Vague and ambiguous.</p> <p>3 THE WITNESS: No, not that I can recollect.</p> <p>4 BY MR. CHRISTMAS:</p> <p>5 Q Do you recall the identities of the payors on</p> <p>6 the receivables referred to in that sentence?</p> <p>7 A They were the Cedenco entities.</p> <p>8 Q And it says they were sold. Do you know who</p> <p>9 the purchaser was, if that was the case?</p> <p>10 A The revocable trust.</p> <p>11 Q So these were -- if I understand what you've</p> <p>12 been saying, these were payables to SK Foods LP; is</p> <p>13 that correct?</p> <p>14 A Yes.</p> <p>15 Q After the transaction that is referred to in</p> <p>16 this second sentence here, can you describe the payor</p> <p>17 and payees in terms of chain of identification of</p> <p>18 those entities?</p> <p>19 MR. PETERSEN: Can I hear the question back,</p> <p>20 please.</p> <p>21 BY MR. CHRISTMAS:</p> <p>22 Q Let me maybe make it clear.</p> <p>23 The initial structure, as I understand it</p> <p>24 from your testimony, is that there were payables from</p> <p>25 the Australian and New Zealand subsidiaries to SK</p>	<p style="text-align: right;">Page 32</p> <p>1 Q So who was the payor?</p> <p>2 A The revocable trust.</p> <p>3 Q So the revocable trust was then the payor to</p> <p>4 SK Foods LP to your understanding?</p> <p>5 A They had the payable obligation.</p> <p>6 Q They had the obligation, okay.</p> <p>7 To your understanding, then, tell me if I'm</p> <p>8 wrong, did the Cedenco entities then have the</p> <p>9 obligation to pay the trust under the way this was</p> <p>10 structured?</p> <p>11 MR. PETERSEN: Objection to the extent it calls</p> <p>12 for a legal conclusion.</p> <p>13 BY MR. CHRISTMAS:</p> <p>14 Q Just your understanding.</p> <p>15 A As an accountant with an understanding, yes.</p> <p>16 Q Do you know the terms of payment for the</p> <p>17 revocable trust's obligation to pay?</p> <p>18 A Not as I sit here.</p> <p>19 Q Did you ever look at that?</p> <p>20 A Not that I recollect.</p> <p>21 Q Were you aware if there were any payables</p> <p>22 owed by SK Foods LP to the Cedenco entities?</p> <p>23 MR. PETERSEN: Objection. Vague as to time.</p> <p>24 BY MR. CHRISTMAS:</p> <p>25 Q What year are we talking about? For the</p>
<p style="text-align: right;">Page 31</p> <p>1 Foods?</p> <p>2 A Yes.</p> <p>3 Q Now, by a sale, there is now another party in</p> <p>4 that relationship, so can you describe your</p> <p>5 understanding of who the payees and payors were after</p> <p>6 that sale?</p> <p>7 MR. PETERSEN: The question is vague and</p> <p>8 ambiguous.</p> <p>9 BY MR. CHRISTMAS:</p> <p>10 Q Do you understand the question?</p> <p>11 A I am a little vague on payee on payor. Can</p> <p>12 we stick with payable and receivable?</p> <p>13 Q Okay, sure.</p> <p>14 A Okay. The SK Foods had a receivable from the</p> <p>15 revocable trust, therefore they were the payor or</p> <p>16 payable. They had the payable to SK Foods.</p> <p>17 Q And did that continue to be the case after</p> <p>18 the sale?</p> <p>19 A That was the case after the sale, yes.</p> <p>20 Q So what is your understanding of what was</p> <p>21 sold?</p> <p>22 A The intercompany receivables.</p> <p>23 Q Okay. So did that change the identity of who</p> <p>24 was paying -- who had the obligation to pay?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 period ending June 30, 2007?</p> <p>2 A I don't have a specific recollection.</p> <p>3 Q Okay. Do you know if as part of this sale</p> <p>4 transaction referred to in the second sentence of this</p> <p>5 paragraph, that those obligations, do you know if they</p> <p>6 were part of the sale transaction?</p> <p>7 A I'm not certain specifically what obligations</p> <p>8 you're referring to.</p> <p>9 Q Well, are you aware that during this fiscal</p> <p>10 year there were payables owed from the U.S. company</p> <p>11 back to the Australian and New Zealand companies?</p> <p>12 A I'm aware there were some transactions during</p> <p>13 the course of the year. I'm not aware of specific</p> <p>14 balances at year-end.</p> <p>15 Q What I'm asking is whether those payables</p> <p>16 were also part of the sale transactions referred to in</p> <p>17 this document?</p> <p>18 MR. PETERSEN: Objection. No foundation.</p> <p>19 BY MR. CHRISTMAS:</p> <p>20 Q If you know.</p> <p>21 A I am hesitant to answer without knowing the</p> <p>22 specific payables you're referring to. If you could</p> <p>23 draw my attention, that might be more responsive.</p> <p>24 MR. CHRISTMAS: Did we mark 17?</p> <p>25 MR. PETERSEN: Yeah.</p>

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<p style="text-align: right;">Page 34</p> <p>1 BY MR. CHRISTMAS:</p> <p>2 Q Perhaps this document will help. If I could</p> <p>3 draw your attention to Exhibit 17. Do you recognize</p> <p>4 this document?</p> <p>5 A Yes.</p> <p>6 Q Can you tell me what it is?</p> <p>7 A It's tracking the intercompany receivables.</p> <p>8 Q Can you explain to me the line items on this</p> <p>9 document?</p> <p>10 A This is accumulating the data of what was the</p> <p>11 account balances and some other composition that was</p> <p>12 being transferred.</p> <p>13 Q And what is the purpose of this document? Is</p> <p>14 it to show a transaction or to just accumulate the</p> <p>15 totals?</p> <p>16 A It's to accumulate the totals for the amount</p> <p>17 presented on the financial statement.</p> <p>18 Q Now, the first number on there, 7 --</p> <p>19 approximately \$7.7 million, do you have an</p> <p>20 understanding as to what that number represents?</p> <p>21 A It was the beginning balance in that specific</p> <p>22 account.</p> <p>23 Q Do you know what that account was?</p> <p>24 A Not as I sit here.</p> <p>25 Q Could it be a foreign exchange account?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q So this calculation that is displayed in this</p> <p>2 document assumes that the sale is taking place?</p> <p>3 A Yes.</p> <p>4 Q Okay. So returning to my question of a few</p> <p>5 moments ago, did the sale include payables by SK Foods</p> <p>6 back to the Cedenco entities?</p> <p>7 A There are payables, yes.</p> <p>8 Q Can you identify those on this page?</p> <p>9 A There are lines, I/C payable Cedenco</p> <p>10 Australia.</p> <p>11 Q Give the corresponding amounts for the</p> <p>12 record.</p> <p>13 A \$5,499,980.</p> <p>14 Q Any others?</p> <p>15 A I/C payables Cedenco Australia, 3,199,978.</p> <p>16 Q Okay. Any others?</p> <p>17 A Those are the two payables that are listed.</p> <p>18 Q Do you know if this sale transaction</p> <p>19 encompassed all of the intercompany debt between the</p> <p>20 Cedenco entities and SK Foods? And when I say</p> <p>21 intercompany, I mean both the amounts owed from the</p> <p>22 Cedenco entities up to the U.S. entity and the amounts</p> <p>23 owed by the U.S. entity back to the Cedenco companies?</p> <p>24 MR. PETERSEN: Objection. No foundation.</p> <p>25 BY MR. CHRISTMAS:</p>
<p style="text-align: right;">Page 35</p> <p>1 MR. PETERSEN: Objection. Calls for speculation.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. CHRISTMAS:</p> <p>4 Q Do you know what the reference is there to</p> <p>5 investment in SK Foods LLC is, most of the way down</p> <p>6 the chart?</p> <p>7 A Other than what it says, no.</p> <p>8 Q And how about investment in SK Foods</p> <p>9 Australia?</p> <p>10 A Same answer.</p> <p>11 Q Okay. Does this document show the --</p> <p>12 withdraw that. Let me rephrase it.</p> <p>13 Does this document give effect to the sale</p> <p>14 that we were referring to in the last exhibit?</p> <p>15 MR. PETERSEN: Objection. It's vague and</p> <p>16 ambiguous as to "give effect."</p> <p>17 BY MR. CHRISTMAS:</p> <p>18 Q Do you know what I mean? Do you understand</p> <p>19 the question?</p> <p>20 A No.</p> <p>21 Q Okay. Is this document meant to display the</p> <p>22 facts as they existed after the sale of the</p> <p>23 receivables?</p> <p>24 A It summarizes to the ending balance after the</p> <p>25 sale of the receivables.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q You can answer.</p> <p>2 A No, it does not include all of the amounts.</p> <p>3 Q Which ones were excluded?</p> <p>4 A I would have to look through the work papers</p> <p>5 to identify. But I have one specific recollection</p> <p>6 related to the receivable that Aviation held from the</p> <p>7 Cedenco entities.</p> <p>8 Q I was just focusing on SK Foods LP. Go</p> <p>9 ahead.</p> <p>10 A From a reporting perspective, SK Foods LP</p> <p>11 includes SK Aviation.</p> <p>12 Q We were looking at Exhibit 20. And if you</p> <p>13 could pull that back out, page 2, back to that</p> <p>14 paragraph. There is a reference at the end of that</p> <p>15 paragraph to "See analysis at A-19.05." Do you see</p> <p>16 that there?</p> <p>17 A Yes.</p> <p>18 Q Can you tell me what that reference is to?</p> <p>19 A It's to a work paper number.</p> <p>20 MR. CHRISTMAS: This is 22.</p> <p>21 (Deposition Exhibit 22 marked.)</p> <p>22 BY MR. CHRISTMAS:</p> <p>23 Q Mr. Nutley, the court reporter has handed you</p> <p>24 Exhibit 22 to your deposition. Do you recognize this</p> <p>25 document?</p>

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<p>1 A Yes, yes.</p> <p>2 Q Okay. And can you tell me what it is?</p> <p>3 A It's a memo in our work papers.</p> <p>4 Q Is this the work paper that is referred to in</p> <p>5 the prior one that we just looked at?</p> <p>6 A The number is not on this work paper, so I</p> <p>7 can't say with certainty.</p> <p>8 Q Who prepared this page?</p> <p>9 A I'm not certain as I sit here.</p> <p>10 Q What is the purpose of this page? Can you</p> <p>11 tell me?</p> <p>12 MR. PETERSEN: Objection. No foundation.</p> <p>13 THE WITNESS: It's a memo to describe the</p> <p>14 disposition of foreign entities.</p> <p>15 BY MR. CHRISTMAS:</p> <p>16 Q Okay. Did you assist in preparing this</p> <p>17 document?</p> <p>18 A Yes.</p> <p>19 Q And how do you assist in preparing it?</p> <p>20 A I don't know the details of my role in</p> <p>21 preparing it, but I was involved in preparing it.</p> <p>22 Q Okay. Now let's, if we could -- do you agree</p> <p>23 with what is stated in this document?</p> <p>24 A Yes.</p> <p>25 Q Now, perhaps could you give us some history</p>	<p>1 management of SK Foods LP about responding to FIN 46?</p> <p>2 A I don't have a specific recollection.</p> <p>3 Q Okay. Were you involved in determining the</p> <p>4 structure of how the company was going to respond FIN</p> <p>5 46 the first time it became effective?</p> <p>6 A I'm not sure I understand the question.</p> <p>7 Q Well, do you know what they did to respond to</p> <p>8 FIN 46?</p> <p>9 MR. PETERSEN: Objection. Vague as to time.</p> <p>10 BY MR. CHRISTMAS:</p> <p>11 Q When FIN 46 first became applicable to SK</p> <p>12 Foods LP, do you know what they did during that first</p> <p>13 fiscal year that it became applicable?</p> <p>14 A They studied the professional standards, read</p> <p>15 the professional standards, looked at the organization</p> <p>16 and reached an assessment as to which would be the</p> <p>17 appropriate entities to be -- how the related entities</p> <p>18 would be treated under FIN 46.</p> <p>19 Q And what did they decide was going to be the</p> <p>20 treatment?</p> <p>21 A The conclusion was the two entities. SK</p> <p>22 Foods was the primary beneficiary, and those two</p> <p>23 entities would need to be consolidated with SK Foods.</p> <p>24 And there are a series of other entities, and the</p> <p>25 conclusion was that SK Foods was not the primary</p>
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<p>1 here. You had testified earlier that FIN 46, looking</p> <p>2 at a document, this was the first year that FIN 46</p> <p>3 became applicable to SK Foods; is that correct?</p> <p>4 A No.</p> <p>5 Q It's not?</p> <p>6 A No.</p> <p>7 Q Can you elaborate on that?</p> <p>8 A It became effective for the year ending</p> <p>9 October 31st, 2006.</p> <p>10 Q Okay.</p> <p>11 A This work paper is referring to the eight</p> <p>12 months ending June 30, 2007.</p> <p>13 Q The first paragraph refers to a change in the</p> <p>14 fiscal year. So the fiscal year changed during the</p> <p>15 course of your -- did it change during the course of</p> <p>16 your audit, or how did that come about; do you know?</p> <p>17 A Management of the company made a decision</p> <p>18 that it would be better to report their operations on</p> <p>19 fiscal year-end June 30th.</p> <p>20 Q So were you involved in assisting the</p> <p>21 management of SK Foods in determining how it was going</p> <p>22 to respond to FIN 46?</p> <p>23 MR. PETERSEN: Objection. Vague as to time.</p> <p>24 BY MR. CHRISTMAS:</p> <p>25 Q When did you first have discussions with</p>	<p>1 beneficiary and those would not be included in the</p> <p>2 consolidated group.</p> <p>3 Q So which were the entities that were not</p> <p>4 going to be included?</p> <p>5 A It's a string of related entities. I don't</p> <p>6 remember all of the names as I sit here today.</p> <p>7 Q Were they Australian and New Zealand</p> <p>8 entities?</p> <p>9 A No.</p> <p>10 Q What country of origin were they?</p> <p>11 A U.S.</p> <p>12 Q Focusing on the Australian and New Zealand</p> <p>13 companies, did management determine that it was going</p> <p>14 to change the ownership of the Australian and New</p> <p>15 Zealand companies in response to FIN 46?</p> <p>16 MR. PETERSEN: Objection. Calls for speculation.</p> <p>17 THE WITNESS: I don't have a recollection of</p> <p>18 that.</p> <p>19 BY MR. CHRISTMAS:</p> <p>20 Q Do you know if the ownership of the</p> <p>21 Australian and New Zealand companies was changed in</p> <p>22 any of the periods for which Moss-Adams did the audit?</p> <p>23 A Yes.</p> <p>24 Q Okay. What year did that take effect in?</p> <p>25 A Effective November 1st, 2006.</p>

11 (Pages 38 to 41)

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<p>1 Q And do you recall discussing with Mr. Salyer, 2 if you did, how to structure that change in ownership? 3 A No, not specifically Mr. Salyer. 4 Q Anybody else? 5 A Management of the company. 6 Q Can you recall anyone specifically? 7 A Ms. Seymour and Mr. McCormick. I believe 8 Mr. Salyer was present for one conversation. 9 Q And were there alternatives presented by 10 anybody in terms of how to structure the transfer of 11 ownership? 12 MR. PETERSEN: Objection. Vague as to time and 13 the question is vague and ambiguous. 14 BY MR. CHRISTMAS: 15 Q You can answer. 16 A Yes. 17 Q Okay. And do you recall who -- were you one 18 of the people who presented alternative structures? 19 A Yes. 20 Q Okay. Can you recall what any of those were? 21 A Focusing on structures that there was the 22 possibility of distributing all of the receivables and 23 the ownership interest to the partners. And there was 24 the possibility of distributing -- well, what was 25 ultimately done, distributing the ownership interest</p>	<p>1 Was it in response to FIN 46 or was it in response to 2 FIN 46 and anything else or do you know? 3 MR. PETERSEN: Objection. Calls for speculation. 4 MR. LEWIS: Objection. Calls for speculation. 5 BY MR. CHRISTMAS: 6 Q I'm just asking you what you know. 7 A And my understanding with the switch of the 8 fiscal year-end, the financial reporting, with the 9 inclusion of the foreign subsidiaries, became much 10 more complicated. 11 Q Okay. 12 A And management believed that that 13 complication would give them reporting difficulties. 14 Q Okay. Do you know if anyone outside of SK 15 Foods also believed that reporting would then be 16 greater -- have a greater complication, anyone not 17 associated with the companies? 18 MR. LEWIS: Objection. Lack of foundation. 19 MR. PETERSEN: Calls for speculation. 20 BY MR. CHRISTMAS: 21 Q You can answer. 22 A Not that I recollect. 23 Q Do you recall if any -- did you ever learn 24 that any of the lenders wished to have the non-U.S. 25 entities put outside of the financial statements?</p>
Page 43	Page 45
<p>1 and distributing the receivables. Those are two that 2 I recollect. 3 Q Okay. Now, do you know why the first -- 4 well, let me ask you this question. 5 Do you know which of those two was ultimately 6 chosen? 7 A Yes, the distribution of the ownership 8 interest and the sale of the receivables. 9 Q That's the second one, I believe -- 10 A Yes. 11 Q -- that you just listed. 12 Do you know why the first one was not chosen? 13 A Management told me that if the first method 14 were used, that it would create a tax liability for 15 the partners of SK Foods. 16 MR. CHRISTMAS: Mr. Lewis. 17 MR. LEWIS: Yes. 18 MR. CHRISTMAS: We heard some beeping. 19 MR. LEWIS: I don't know what that was. 20 MR. CHRISTMAS: Okay. 21 MR. LEWIS: I'm still here, though. 22 MR. CHRISTMAS: Okay. All right. 23 BY MR. CHRISTMAS: 24 Q Was there any particular reason that the 25 transfer of ownership occurred, to your knowledge?</p>	<p>1 A My recollection is that management -- 2 MR. LEWIS: Objection. Lack of foundation. 3 BY MR. CHRISTMAS: 4 Q I'm just asking you what you know. 5 A My recollection is that management told me 6 that the lenders didn't need the foreign reporting 7 subsidiaries included. 8 Q Who told you that? 9 A I don't have a recollection of a specific 10 person. 11 Q Did you ever have any direct discussions with 12 any members of the lending group for SK Foods? 13 MR. PETERSEN: Objection. Vague and ambiguous as 14 to lending group. 15 BY MR. CHRISTMAS: 16 Q Well, you testified earlier that you 17 believe -- if I have it correct, that you understand 18 that Bank of Montreal was a lender to SK Foods, 19 correct? 20 A Yes. 21 Q Were you aware of any other lenders to SK 22 Foods? 23 A Not as I sit here today. 24 MR. LEWIS: Objection. Lack of foundation. 25 BY MR. CHRISTMAS:</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q Did you ever have any communications with any 2 of the representatives with the Bank of Montreal 3 during the course of any of your audits? 4 A Yes. 5 Q And can you tell me in what connection you 6 had those communications? 7 A I don't have the specific people and times, 8 but it was during the course of the audit you wind up 9 talking to lenders. I know I met lending officers. 10 Q Did you ever have any communications with 11 representatives of the lenders regarding whether or 12 not the foreign subsidiaries, the Cedenco subsidiaries 13 were to be included in the financial statements? 14 A Not that I can recollect as I sit here today. 15 Q Do you recall ever having any communications 16 with representatives of the lenders regarding the 17 distribution of the shares in the foreign entities to 18 the partners? 19 MR. PETERSEN: Objection. Sorry. It's vague and 20 ambiguous as to lenders. He's only testified as to 21 one lender. 22 BY MR. CHRISTMAS: 23 Q Okay. The MO. 24 A Okay, not as I sit here today. 25 If we're moving on to a new exhibit, can I</p>	<p style="text-align: right;">Page 48</p> <p>1 specifically. 2 MR. CHRISTMAS: This is 23. 3 (Deposition Exhibit 23 marked.) 4 BY MR. CHRISTMAS: 5 Q Mr. Nutley, the court reporter has handed you 6 Exhibit 23 to your deposition, a document with the 7 title "SK Foods LP Description Cedenco Entities, 8 6-30-07." Can you tell me what this document is? 9 A It's a document from our work papers 10 describing the Cedenco entities. 11 Q And at the bottom -- at the bottom, the last 12 paragraph, is there a reference to the distribution of 13 the ownership interests? 14 A Yes. 15 MR. PETERSEN: Objection. The document speaks 16 for itself. 17 BY MR. CHRISTMAS: 18 Q Did you have a role in preparing this 19 document? 20 A Yes. 21 Q Can you tell me what that role was? 22 A Reviewing it. 23 Q And do you agree with the statements in this 24 document? 25 A Yes.</p>
<p style="text-align: right;">Page 47</p> <p>1 take a break? 2 MR. CHRISTMAS: Of course. 3 (Recess.) 4 BY MR. CHRISTMAS: 5 Q We've discussed off the record that the 6 witness recalls some additional information about one 7 of my questions. Do you want to go ahead, Mr. Nutley? 8 A Yeah. The journal entries the company 9 prepared to record the transfer of the ownership 10 interest and the receivables. 11 Q So this was -- this is a supplement to your 12 response to my question as to what documents you saw 13 which supported the statement in -- do you know where 14 we were? 15 A Exhibit 22. 16 Q So it's with respect to that document. 17 A Yes. 18 Q So the sentence, "SKFLP has decided to 19 distribute the shares in the foreign entities to the 20 partners," so these are adjusting journal entries that 21 you saw in connection with that transaction? 22 A Yes. 23 Q Okay. And who prepared those adjusting 24 journal entries? 25 A Management of the company. I don't recall</p>	<p style="text-align: right;">Page 49</p> <p>1 Q Who is Abigail Pike? 2 A She's a senior manager with Moss-Adams. 3 Q And what was her role in the audit for -- 4 well, let's start with the first audit. The first 5 audit was -- and I apologize. 6 Did the time period change in - well, what 7 time period was the first audit? 8 A The first examination was for the year ending 9 October 31st, 2006. 10 Q Okay. So for that one she -- what was her 11 role, if any? 12 A She was a senior manager on the engagement. 13 Q And did she have a role in the second audit? 14 A No, limited role in the second audit. 15 MR. CHRISTMAS: Okay. Let's do 30. 16 (Deposition Exhibit 30 marked.) 17 BY MR. CHRISTMAS: 18 Q Mr. Nutley, I've handed you a document that 19 has been marked as Exhibit 30 to your deposition, 20 which is a series of e-mails, starting with an e-mail 21 dated August 21, 2007, at 5:02 p.m. from Ms. Pike to 22 Mr. Boos, Darrell Carlis, Ms. Seymour and others, and 23 a copy to you, and there are subsequent e-mails. 24 Focusing first on the e-mail from Ms. Pike, 25 do you recall -- well, let me withdraw that and</p>

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<p style="text-align: right;">Page 50</p> <p>1 rephrase that.</p> <p>2 Is she addressing FIN 46 there?</p> <p>3 MR. PETERSEN: Objection. Calls for speculation,</p> <p>4 no foundation. The document speaks for itself.</p> <p>5 THE WITNESS: Do you want me to answer?</p> <p>6 BY MR. CHRISTMAS:</p> <p>7 Q Yeah, okay. I didn't know we were on hold.</p> <p>8 A The subject line says that it's addressing</p> <p>9 FIN 46.</p> <p>10 Q Do you have any recollection of discussing</p> <p>11 the matters which she's addressing in her e-mail with</p> <p>12 her?</p> <p>13 A No.</p> <p>14 Q At this point in time in August of 2007, what</p> <p>15 is the status of the, if you know, the decision by</p> <p>16 firm management to transfer the ownership of the</p> <p>17 Cedenco companies?</p> <p>18 A I don't know.</p> <p>19 Q Do you recall ever discussing with Ms. Pike</p> <p>20 the substance of the next e-mail from Ms. Seymour to</p> <p>21 Ms. Pike, where Ms. Seymour says, "We're going to have</p> <p>22 it tough to get through this, any more suggestions"?</p> <p>23 A No.</p> <p>24 Q Now, do you recall whether Mr. Salyer had</p> <p>25 expressed any unhappiness with your firm's services at</p>	<p style="text-align: right;">Page 52</p> <p>1 A The eight months ending June 30th, 2007.</p> <p>2 Q Do you recall if Moss-Adams was ever asked to</p> <p>3 perform the audit for the following year?</p> <p>4 A Yes.</p> <p>5 Q And did Moss-Adams ultimately perform that</p> <p>6 audit?</p> <p>7 A No.</p> <p>8 Q Can you tell me your understanding as to why?</p> <p>9 MR. LEWIS: Objection. Lack of personal</p> <p>10 knowledge.</p> <p>11 BY MR. CHRISTMAS:</p> <p>12 Q You can answer.</p> <p>13 A We had staffing constraints and we were not</p> <p>14 satisfied with our relationship with the company.</p> <p>15 Q And in what ways were you -- was Moss-Adams</p> <p>16 not satisfied?</p> <p>17 A In our experience, it was a hard audit to</p> <p>18 work on and the company did not emphasize the audit</p> <p>19 process, which made it difficult to complete the work.</p> <p>20 Q What do you mean by the company didn't --</p> <p>21 well, let me try the first answer.</p> <p>22 Why was it a hard audit?</p> <p>23 A Because the company didn't emphasize working</p> <p>24 with the auditors.</p> <p>25 Q What do you mean by emphasize?</p>
<p style="text-align: right;">Page 51</p> <p>1 any point in time?</p> <p>2 A Yes.</p> <p>3 Q Do you recall when he did that?</p> <p>4 A No.</p> <p>5 Q Do you recall in what connection he did that?</p> <p>6 A No.</p> <p>7 Q Did he ever express it to you directly?</p> <p>8 A Yes.</p> <p>9 Q And was that by telephone or in person?</p> <p>10 A In person.</p> <p>11 Q Do you recall what he said?</p> <p>12 A Only one part of the conversation.</p> <p>13 Q Okay. What do you recall?</p> <p>14 A That we were about ready to be pushed off the</p> <p>15 edge of the cliff.</p> <p>16 Q You mean discharged?</p> <p>17 A I don't know what he meant by that. It was</p> <p>18 colorful, that's why I remember it.</p> <p>19 Q Do you know what he was referring to?</p> <p>20 A His displeasure with us.</p> <p>21 Q Do you know what the focus of his displeasure</p> <p>22 was?</p> <p>23 A No, not as I sit here today.</p> <p>24 Q What was the last period that Moss-Adams</p> <p>25 performed an audit for SK Foods LP?</p>	<p style="text-align: right;">Page 53</p> <p>1 A They weren't focused on preparing schedules</p> <p>2 and being responsive to audit requests.</p> <p>3 MR. CHRISTMAS: This is 31.</p> <p>4 (Deposition Exhibit 31 marked.)</p> <p>5 BY MR. CHRISTMAS:</p> <p>6 Q Mr. Nutley, I've handed the court reporter a</p> <p>7 document marked Exhibit 31 to your deposition. I'm</p> <p>8 going to ask you a series of questions. Well, first</p> <p>9 let me ask you to identify the document. Do you</p> <p>10 recognize this document?</p> <p>11 A Page 1 I recognize.</p> <p>12 Q How about the attachment?</p> <p>13 A No, I do not recognize that.</p> <p>14 Q And is this an e-mail that you authored and</p> <p>15 sent -- well, an e-mail that you sent on</p> <p>16 September 13th, 2007, at 4:30 p.m.?</p> <p>17 MR. KALLANDER: The first page?</p> <p>18 MR. CHRISTMAS: The first page.</p> <p>19 THE WITNESS: Yes, that is what is described on</p> <p>20 the document.</p> <p>21 BY MR. CHRISTMAS:</p> <p>22 Q And this is your e-mail?</p> <p>23 A Yes.</p> <p>24 Q Now that we've identified it, if you can read</p> <p>25 it and I'm going to ask you a series of questions</p>

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<p style="text-align: right;">Page 54</p> <p>1 about it.</p> <p>2 A Yes.</p> <p>3 Q Okay. And the first line, I believe you</p> <p>4 touched on this earlier. The first paragraph relates</p> <p>5 to one method of addressing FIN 46. And is this the</p> <p>6 one that you identified previously as distributing</p> <p>7 both the notes receivable and the ownership?</p> <p>8 A Yes.</p> <p>9 Q And you say here, "This is not a practical</p> <p>10 solution because we understand it leads to a</p> <p>11 significant tax liability." What was the basis of</p> <p>12 your understanding that it leads to a significant tax</p> <p>13 liability?</p> <p>14 A Communications with management.</p> <p>15 Q Okay. Do you know if Mr. Boos ever weighed</p> <p>16 in on that issue?</p> <p>17 A No.</p> <p>18 Q Do you know who Mr. Boos is?</p> <p>19 A Yes.</p> <p>20 Q And can you tell me who Wayne Boos is?</p> <p>21 A He's a partner/owner of a CPA firm in Fresno</p> <p>22 who did the tax work for SK Foods.</p> <p>23 Q Who was the primary person at -- if there was</p> <p>24 one, at Moss-Adams who was leading the efforts to</p> <p>25 address FIN 46?</p>	<p style="text-align: right;">Page 56</p> <p>1 reference to where you say, "Hopefully there's enough</p> <p>2 basis to make this a nontaxable event." Do you know</p> <p>3 whether or not there was sufficient basis so that the</p> <p>4 distribution of the Cedenco stock was an untaxable</p> <p>5 event?</p> <p>6 A No.</p> <p>7 Q Do you recall ever having any discussions</p> <p>8 about that?</p> <p>9 A No.</p> <p>10 MR. PETERSEN: Just so I'm clear, your answer is</p> <p>11 you don't know whether there was sufficient basis?</p> <p>12 THE WITNESS: I don't recall having a discussion.</p> <p>13 BY MR. CHRISTMAS:</p> <p>14 Q In the fourth sentence -- or fourth</p> <p>15 paragraph, rather, you say, "Suggests the notes</p> <p>16 receivable would be reported like a stockholder</p> <p>17 receivable in a corporation and classified as a contra</p> <p>18 to partner's equity. This classification would reduce</p> <p>19 an auditor's need to be intrusive into the partners</p> <p>20 financial position."</p> <p>21 Do you recall any discussions as to whether</p> <p>22 or not there was a desire by SK Foods management that</p> <p>23 auditors not be intrusive into the partner's financial</p> <p>24 position?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. PETERSEN: Objection. Vague as to time.</p> <p>2 THE WITNESS: It varies in time frame.</p> <p>3 BY MR. CHRISTMAS:</p> <p>4 Q Okay. Then tell me.</p> <p>5 A For the year ending October 31st, 2006,</p> <p>6 Abigail Pike did most of the analysis.</p> <p>7 Q Okay. And then for the following, I'll call</p> <p>8 it the stub period.</p> <p>9 A The short period?</p> <p>10 Q The short period.</p> <p>11 A It would be Roger Kutz and myself.</p> <p>12 Q So moving back to the document. The second</p> <p>13 paragraph says, "We have developed another idea to</p> <p>14 accomplish the same thing." Where you referenced</p> <p>15 there "We have developed," who is the "we"?</p> <p>16 A It would be myself, Roger, discussions with</p> <p>17 mark McCormick and Ms. Seymour.</p> <p>18 Q And who is Mr. McCormick?</p> <p>19 A He was -- I don't remember his title.</p> <p>20 Q Well, what did you understand his areas of</p> <p>21 responsibilities were?</p> <p>22 A My understanding is he's responsible for</p> <p>23 finance and some aspects of general management of the</p> <p>24 company, is my understanding.</p> <p>25 Q Moving to the third sentence, there's a</p>	<p style="text-align: right;">Page 57</p> <p>1 Q Okay. And with whom -- who expressed that on</p> <p>2 behalf of SK Foods LP?</p> <p>3 A Ms. Seymour and Mr. McCormick.</p> <p>4 Q And do you recall what Ms. Seymour said?</p> <p>5 A No, not specifically.</p> <p>6 Q How about Mr. McCormick?</p> <p>7 A No.</p> <p>8 Q Was your suggestion about the reporting in</p> <p>9 that second sentence of paragraph 4 acceptable to the</p> <p>10 management of SK Foods?</p> <p>11 A No.</p> <p>12 Q Why not?</p> <p>13 A I don't know.</p> <p>14 Q So let me break that down. Is that because</p> <p>15 they do not agree with the classification or is it</p> <p>16 because the ultimate structure did not reflect what</p> <p>17 you're suggesting there?</p> <p>18 MR. PETERSEN: Objection. Calls for speculation,</p> <p>19 no foundation.</p> <p>20 THE WITNESS: They told me it was not acceptable.</p> <p>21 BY MR. CHRISTMAS:</p> <p>22 Q Which, the classification or the proposal for</p> <p>23 the structure?</p> <p>24 A The classification.</p> <p>25 Q Okay. Did they say why it wasn't acceptable?</p>

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1 A Not that I remember.
 2 Q And the following paragraph, which is 1, 2,
 3 3, 4, 5, you say there -- I believe I'm reading this
 4 correctly. You're suggesting that the effective date
 5 of the distribution of the equity of the partners and
 6 the disposition of the debt be made effective
 7 November 1, 2006. Have I read that correctly?
 8 A These are receivables, not debt.
 9 Q Okay. I call them debt; you call them
 10 receivables. We're talking about the same thing.
 11 A I just want to make sure we have clarity.
 12 Q Understood.
 13 What was the purpose of making it effective
 14 November 1, 2006?
 15 A The next sentence describes it. Quoting,
 16 "This would eliminate including Cedenco in the income
 17 statement."
 18 Q Now, your next paragraph says, "Attached is a
 19 pro forma consolidating balance sheet as if this had
 20 been done at 10-31-06." The attachment, which it
 21 bears a sequential Bates number as if it were the
 22 attachment to this e-mail, is that not the attachment
 23 to your e-mail?
 24 A I don't know as I sit here.
 25 Q Okay. Do you have any reason to doubt that

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1 that was the attachment to your e-mail?
 2 MR. PETERSEN: Objection to the extent that it's
 3 inconsistent with his prior statement that he does not
 4 recall the document.
 5 BY MR. CHRISTMAS:
 6 Q I'm just asking you if you have any reason to
 7 question it.
 8 A No.
 9 MR. CHRISTMAS: This is 33.
 10 (Deposition Exhibit 33 marked.)
 11 BY MR. CHRISTMAS:
 12 Q Mr. Nutley, the court reporter has handed you
 13 Exhibit 33 to your deposition, which is a series of
 14 e-mails containing, first, the e-mail that we had
 15 looked at of September 13, 2007, in the prior exhibit.
 16 And now, at the top is an e-mail which
 17 appears to be from Mr. Salyer dated September 13,
 18 2007, at 6:31 p.m. Do you see that?
 19 A Yes.
 20 Q Do you recall receiving the e-mail from
 21 Mr. Salyer in this exhibit?
 22 A Yes.
 23 Q And what he says there is this won't work,
 24 try again. Can't drop equity by \$37 m." Do you
 25 know -- to your understanding, to what is he referring

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1 there?
 2 MR. PETERSEN: Calls for speculation.
 3 BY MR. CHRISTMAS:
 4 Q I'm just asking for your understanding.
 5 A To the suggestion described below.
 6 Q What would drop equity by 37, it looks like
 7 million dollars?
 8 MR. PETERSEN: Objection. Calls for speculation.
 9 THE WITNESS: I don't know the validity of that
 10 number of at all.
 11 BY MR. CHRISTMAS:
 12 Q But you recall receiving the e-mail?
 13 A Yes.
 14 Q Did you have a discussion with Mr. Salyer
 15 about what he wrote about there?
 16 A No.
 17 Q Do you know if you responded to this e-mail?
 18 A Not that I remember.
 19 MR. CHRISTMAS: This is 35.
 20 (Deposition Exhibit 35 marked.)
 21 BY MR. CHRISTMAS:
 22 Q Mr. Nutley, the court reporter has handed you
 23 Exhibit 35 to your deposition, which is, again, a
 24 series of e-mails, which it appears to me adds to the
 25 last exhibit a response by you dated September 14,

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1 2007, at 5:47 a.m.
 2 Am I correct in rading this, that the e-mail
 3 directly above the e-mail from Mr. Salyer of
 4 September 13, 2007, at 6:30 is your response to the
 5 e-mail that we looked at in your last answer?
 6 A Yes, that's what it appears to be.
 7 Q Okay. So you didn't have a telephone
 8 conversation, I take it, in response to his last
 9 e-mail? Is this how you responded, this e-mail?
 10 A This is a response.
 11 Q Okay. And can you tell me what you -- what
 12 you're conveying to him?
 13 MR. PETERSEN: Objection. The document speaks
 14 for itself.
 15 THE WITNESS: Yeah, it's written out in the
 16 document.
 17 BY MR. CHRISTMAS:
 18 Q Well, let me just ask you one thing in
 19 particular about this. It says in the first sentence,
 20 "We have been told the banks do not rely on the
 21 foreign investments and, in fact, prefer financial
 22 statements without the foreign subsidiaries
 23 consolidated."
 24 Who told you that?
 25 A I don't remember.

16 (Pages 58 to 61)

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<p style="text-align: right;">Page 62</p> <p>1 Q Okay. Now, I believe that this e-mail was 2 not produced in your document production. Do you know 3 why that was? 4 A I didn't locate it in my e-mail files. 5 Q Does Moss-Adams maintain an archive of older 6 e-mails in any way? 7 A I don't know. 8 Q Did you inquire as to whether Moss-Adams 9 maintains an archive of older e-mails in the process 10 of responding to the subpoena? 11 A I don't remember. 12 Q Do you know if anyone else assisted you in 13 reviewing -- obtaining e-mails in response to the 14 subpoena? 15 A Yes. 16 Q Okay. Who did? 17 A We discussed earlier the people on staff that 18 I contacted and looked at their files. 19 Q Did they do their own search or did you do 20 the search? 21 A They did their own. 22 Q Can you think of any reason why this e-mail 23 would not have been produced? 24 A It may have been deleted. 25 Q Do you know how many years Moss-Adams keeps</p>	<p style="text-align: right;">Page 64</p> <p>1 the second one appears to be one from you. And do you 2 recognize this e-mail? 3 A Yes. 4 Q Okay. And in there, in the second paragraph, 5 there's a reference to a third-party lender. Is that 6 what you were just referring to? 7 A Yes. 8 Q Okay. Do you recall if any third-party 9 lenders were identified? 10 A No. 11 MR. CHRISTMAS: This is 38. 12 (Deposition Exhibit 38 marked.) 13 BY MR. CHRISTMAS: 14 Q Mr. Nutley, the court reporter has handed you 15 Exhibit 38 to your deposition. Do you recognize this 16 two-page document? 17 A Yes. 18 Q Can you tell me what it is? 19 A It's a prepared-by-client journal entry. 20 Q And what is the purpose of the journal 21 entries that are reflected on this page -- in this 22 document, rather? 23 MR. PETERSEN: Objection. The document speaks 24 for itself, calls for speculation. 25 BY MR. CHRISTMAS:</p>
<p style="text-align: right;">Page 63</p> <p>1 its e-mails? 2 A No. 3 MR. KALLANDER: Can we go off record real quick? 4 MR. CHRISTMAS: Yes. 5 (Recess.) 6 MR. CHRISTMAS: This is 36. 7 (Deposition Exhibit 36 marked.) 8 BY MR. CHRISTMAS: 9 Q Mr. Nutley, do you recall in the process of 10 SK Foods formulating its response to FIN 46, whether 11 or not there was a discussion of a structure for 12 addressing the payables through using the involvement 13 of a third-party lender? 14 A Yes. 15 Q Can you tell us what that structure involved? 16 A I don't think it ever got to the point of a 17 structure being designed. 18 Q Can you explain at least the basic concept? 19 A It was pretty vague to me, but Mark McCormick 20 was trying to develop a vague concept of somehow these 21 receivables being held by a third party. 22 Q And is that what is being addressed in this 23 e-mail? 24 The court reporter has handed you Exhibit 36 25 to your deposition, which is a series of e-mails, and</p>	<p style="text-align: right;">Page 65</p> <p>1 Q You can answer. 2 A The journal entry transfers the ownership 3 interest in the foreign subsidiaries. 4 Q So when you testified earlier that one of the 5 documents you had seen that supported the conclusion 6 that the ownership of the Cedenco subsidiaries had 7 been transferred, is this the journal entry to which 8 you were referring? 9 A This is one of them, yes. 10 Q Now, there's some text boxes that appear to 11 be superimposed over the document. Are those text 12 boxes created by Moss-Adams? 13 A Yes. 14 Q Do you know who prepared those? 15 Let's start with the one in the upper left. 16 Do you know what the purpose of that notation is? 17 A To describe what that journal entry is. 18 Q Okay. And how about the one in the middle of 19 the page? 20 A Again, just describing the journal entry. 21 Q Okay. And the signatories at the bottom, are 22 those SK Foods people or Moss-Adams people? 23 A SK Foods. 24 Q Other than the text boxes, are there any 25 other notations on this page that you can see that</p>

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<p style="text-align: right;">Page 66</p> <p>1 were made by Moss-Adams? 2 A No, not that I can see. 3 MR. CHRISTMAS: This is 42. 4 (Deposition Exhibit 42 marked.) 5 BY MR. CHRISTMAS: 6 Q Mr. Nutley, the court reporter has handed you 7 Exhibit 42 to your deposition, which is an e-mail from 8 -- appears to be an e-mail from Mr. McCormick to you 9 with copies to Mr. Hay and Mr. Salyer. 10 Now, he says here, "It looks like all of the 11 pieces are in place to resolve the FIN 46 issue." Do 12 you know what Mr. McCormick's role was in attempting 13 to resolve the FIN 46 issue? 14 A He was one of our main contacts of the 15 financial reporting audit. 16 Q Okay. And as of November 8, 2007, do you 17 know what had been decided by the management of the 18 firm in terms of the structure of the response to FIN 19 46? 20 A No. 21 Q At this point in time, how frequently were 22 you in contact with Mr. McCormick? 23 A Weekly. 24 Q Weekly. And was that in person or by e-mail? 25 A By telephone, primarily.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q Referring to Exhibit 42, Mr. McCormick says, 2 "I have been in daily contact with Mr. Nutley." Were 3 you in daily contact or do you agree with that, or 4 not? 5 A Not that I can remember. 6 Q Mr. Nutley, in your view as an auditor, can a 7 transaction be effective prior to the execution of the 8 relevant legal documents? 9 MR. PETERSEN: Objection. Incomplete 10 hypothetical, calls for speculation. 11 BY MR. CHRISTMAS: 12 Q You can answer. 13 A Yes. 14 Q And can you explain your answer? 15 MR. PETERSEN: Same objections. 16 THE WITNESS: You have verbal agreements and you 17 have written agreements. 18 BY MR. CHRISTMAS: 19 Q So a verbal agreement could be effective 20 prior to the execution of a written document? 21 A Yes. 22 Q With respect to the distribution of the 23 partners of the ownership interest in the Cedenco 24 entities, is it your understanding that as of 25 November 1, 2006, there were written documents or</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. CHRISTMAS: Let me do 41. I think we got out 2 of order. 3 (Deposition Exhibit 41 marked.) 4 BY MR. CHRISTMAS: 5 Q Mr. Nutley, the court reporter has handed you 6 Exhibit 41 to your deposition, which is an e-mail from 7 Mark McCormick on which you are copied. He says in 8 this e-mail that, "I have been in daily contact with 9 Dan Nutley." Do you agree or disagree with that 10 statement? 11 MR. PETERSEN: Looking at 42 now or 41? 12 MR. CHRISTMAS: 41. 13 MR. PETERSEN: Hang on a second. 14 MR. KALLANDER: 41 doesn't talk about daily 15 contact. 16 MR. PETERSEN: What I was just handed, it's not 17 41. It's the one that starts, "It looks like all of 18 the pieces are in place to resolve the FIN 46 issue." 19 MR. NUTI: November 8 is 41 and November 15 is 20 42. Let's go off the record. 21 (Recess.) 22 MR. CHRISTMAS: I had erroneously referred to 23 Exhibit 41 in the question that I had asked 24 Mr. Nutley. 25 BY MR. CHRISTMAS:</p>	<p style="text-align: right;">Page 69</p> <p>1 there was an oral agreement? 2 MR. PETERSEN: Objection. No foundation, calls 3 for speculation. It's vague and ambiguous. 4 THE WITNESS: My understanding is the transaction 5 was effective November 1st. The time frame at which 6 that conclusion decision was made, I don't remember. 7 BY MR. CHRISTMAS: 8 Q But isn't it a fact that the actual structure 9 was still being discussed in the fall of 2007 in the 10 e-mails that we've seen? 11 A Yes. 12 Q So do you know when the actual date of the 13 oral understanding, if that's what you believe it to 14 be, occurred? 15 A No. 16 Q Did you ever see any signed transaction 17 documents that confirmed the distribution of the 18 ownership of the Cedenco entities? 19 A I saw the general entries that management 20 prepared. I saw our client representation letter from 21 management saying that the transaction was effective 22 November 1st. 23 Q Is that the extent of what you saw to confirm 24 the effectiveness of the transfer of the equity 25 ownership?</p>

18 (Pages 66 to 69)

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<p>1 A Yes.</p> <p>2 Q Okay. And I'll ask you the same question</p> <p>3 with respect to the transfer of the debt. Are the</p> <p>4 only documents that you saw the client representation</p> <p>5 letter and the adjusted journal entries?</p> <p>6 A Yes. You know, in terms of documents, the</p> <p>7 financial statements are documents, also, that discuss</p> <p>8 and disclose all of this. But in the sense I left</p> <p>9 them out, they're documents.</p> <p>10 Q Thank you for your answer.</p> <p>11 MR. CHRISTMAS: This is 49.</p> <p>12 (Deposition Exhibit 49 marked.)</p> <p>13 BY MR. CHRISTMAS:</p> <p>14 Q Mr. Nutley, the court reporter has handed you</p> <p>15 Exhibit 49 to your deposition, which is a seven-page</p> <p>16 document. Do you recognize this document?</p> <p>17 A Yes.</p> <p>18 Q Can you tell me what it is?</p> <p>19 A It's our documentation or evaluation of the</p> <p>20 Australian and the New Zealand entities, whether they</p> <p>21 were subject to the FIN 46 accounting.</p> <p>22 Q So is this a blank form of questionnaire in</p> <p>23 which information is interposed into various fields,</p> <p>24 or how is this prepared?</p> <p>25 A Yes. It's a form of inquiry where the</p>	<p>1 Q Do you know why the date of November 1, 2006,</p> <p>2 was chosen as opposed to any prior date or subsequent</p> <p>3 date?</p> <p>4 A Yes.</p> <p>5 Q Can you tell me why?</p> <p>6 A It was the sentence in the e-mail that</p> <p>7 describes the need to include the income statement.</p> <p>8 If you didn't use November 1st, you would have had to</p> <p>9 include the Australian entities if you used any later</p> <p>10 date.</p> <p>11 MR. CHRISTMAS: Okay. This is 54.</p> <p>12 (Deposition Exhibit 54 marked.)</p> <p>13 MR. CHRISTMAS: For the record, the one that we</p> <p>14 had marked at the beginning of the deposition as</p> <p>15 marked as 54, it should be marked as 93.</p> <p>16 (Deposition Exhibit 93 marked.)</p> <p>17 MR. PETERSEN: The one at the beginning of the</p> <p>18 day?</p> <p>19 MR. CHRISTMAS: The one that was produced this</p> <p>20 morning.</p> <p>21 MR. NUTI: We're changing Exhibit 54 to 93?</p> <p>22 MR. CHRISTMAS: Yes. I apologize.</p> <p>23 BY MR. CHRISTMAS:</p> <p>24 Q Mr. Nutley, the court reporter has handed you</p> <p>25 Exhibit 54, which is a ten-page document. Can you</p>
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<p>1 auditor responds to the questions to work them through</p> <p>2 the decision.</p> <p>3 Q You had a standard form for FIN 46 in which</p> <p>4 the name of the client and the other personalized</p> <p>5 information is then filled in; do I understand you</p> <p>6 correctly?</p> <p>7 A Yes.</p> <p>8 Q The standard form, did that come from an</p> <p>9 outside entity or service or was it worked up and</p> <p>10 created by Moss-Adams?</p> <p>11 MR. PETERSEN: Objection. Calls for speculation.</p> <p>12 THE WITNESS: I don't know.</p> <p>13 BY MR. CHRISTMAS:</p> <p>14 Q Do you know if this document was part of your</p> <p>15 document production?</p> <p>16 A No, I don't.</p> <p>17 Q Do you know who prepared this document?</p> <p>18 A No, not as I sit here.</p> <p>19 Q Let me just ask you a little bit about the</p> <p>20 audit file. How is the audit file maintained for this</p> <p>21 engagement?</p> <p>22 A Electronically.</p> <p>23 Q Electronically, okay. Is this part of the</p> <p>24 audit file?</p> <p>25 A Yes.</p>	<p>1 tell me what this document is?</p> <p>2 A This is the client representation letter</p> <p>3 related to the audit for the month end June 30th,</p> <p>4 2007.</p> <p>5 Q And what is the purpose of this letter?</p> <p>6 A To document in writing a series of</p> <p>7 representations that management has made to us during</p> <p>8 the course of the audit.</p> <p>9 Q And is this something that your firm requires</p> <p>10 as a matter of policy, or what's the reason for this</p> <p>11 letter?</p> <p>12 A As I previously described, to document the</p> <p>13 representations made during the course of the audit.</p> <p>14 Q And does your firm -- did your firm rely on</p> <p>15 the representations in this letter?</p> <p>16 A Yes.</p> <p>17 Q Now, could you turn to the signature page.</p> <p>18 And do you recognize that signature?</p> <p>19 A It's represented to be Scott Salyer's</p> <p>20 signature.</p> <p>21 Q Do you know if a subsequent letter was</p> <p>22 prepared and added additional signatories?</p> <p>23 A No.</p> <p>24 MR. CHRISTMAS: Let's do 57.</p> <p>25 (Deposition Exhibit 57 marked.)</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 BY MR. CHRISTMAS: 2 Q Mr. Nutley, the court reporter has handed you 3 Exhibit 57 to your deposition, which is a ten-page 4 unsigned document. Do you recognize this document? 5 A Yes. 6 Q Can you tell me what it is? 7 A It's the client representation letter. 8 Q Can you turn to the last page. Can you tell 9 me why, if you know, on this version there are two 10 additional signatories, Mr. McCormick and Ms. Shondale 11 Seymour on this document? 12 A Because they're executives responsible for 13 the financial reporting and we get their signatures as 14 well on the signature letter. 15 Q Did you receive the first version of this 16 with Mr. Salyer's signature and then subsequently 17 request a version with all three signatures or were 18 they circulated at the same time? 19 A We sent a file to SK Foods management 20 requesting them to complete the representation letter 21 printed on their letterhead. 22 Q And did you prepare this representation 23 letter? 24 A The files. 25 MR. PETERSEN: When you say this representation</p>	<p style="text-align: right;">Page 76</p> <p>1 sold the net-related intercompany receivables to a 2 revocable trust with common ownership with the company 3 effective November 1, 2006." 4 With respect to the statements in that 5 sentence, did Moss-Adams rely entirely on this 6 representation letter or were there any -- was there 7 any review or procedures performed to verify that 8 statement? 9 A We reviewed the journal entries that the 10 company recorded and then we had discussions with the 11 company, this is what they did. 12 Q With respect to the net-related intercompany 13 receivables to an irrevocable -- well, let me just 14 refer to it, the net-related intercompany receivables, 15 were there any procedures performed with respect to 16 the collectability of the net-related intercompany 17 receivables? 18 A Yes. 19 Q Tell me what they were. 20 A We looked at the underlying financial 21 strength of the ownership of the entities. 22 Q Is there a working paper that relates to 23 those procedures? 24 A I would have to go back and look. 25 Q Would you expect that there would be one? Go</p>
<p style="text-align: right;">Page 75</p> <p>1 letter -- 2 BY MR. CHRISTMAS: 3 Q Okay, 54. 4 A Yes. 5 Q And how about 57? 6 A Yes. It comes from the same file. 7 Q Okay. 54 is dated December 21, 2007 and 57 8 is dated January 15, 2008. Do you know why -- well, 9 let me ask you. Other than the signature page, were 10 there any other necessary revisions to the letter? 11 A Not to my knowledge. 12 Q Okay. So then am I correct in understanding 13 that the only purpose of resending this document was 14 to get the additional two signatures? 15 A I don't believe the document was re-sent. 16 Q But the date was changed? 17 A Yes. 18 Q Okay. So do you believe the client changed 19 the date? 20 A Yes. 21 Q Could you turn to page 7 of Exhibit 57. If 22 you could look about two-thirds down the page, and 23 I'll just read it into the record. It says there, "We 24 have distributed our investments in foreign 25 subsidiaries (Cedenco entities) to the partners and</p>	<p style="text-align: right;">Page 77</p> <p>1 ahead. 2 A I'll have to consider that. 3 Q Would it ordinarily be your practice, if 4 review of financial statements occurred that you 5 described, that there would be audit papers relating 6 to those procedures? 7 A Your procedures are documented in your files. 8 Q Do you know if they were part of the document 9 production? 10 A No, I do not. 11 MR. CHRISTMAS: Can we just take another brief 12 break? 13 MR. KALLANDER: Sure. 14 (Recess.) 15 (Deposition Exhibit 55 marked.) 16 BY MR. CHRISTMAS: 17 Q Mr. Nutley, the court reporter has handed you 18 a document marked as Exhibit 55. It's a letter 19 followed by a document titled "Debt Assignment 20 Agreement." 21 First, have you ever seen this letter? 22 A Not that I recollect. 23 Q Can you turn to the attachment, the debt 24 assignment agreement. If you could take a look at 25 that document. Tell me if you've ever seen this</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 document.</p> <p>2 A No, not that I recollect.</p> <p>3 Q Okay. If you could turn to the last page.</p> <p>4 And do you see the signature block there?</p> <p>5 A Yes.</p> <p>6 Q Okay. You had testified earlier in relation</p> <p>7 to the transfer of the debt, if you'll recall, of</p> <p>8 the -- well, you used the word -- let me get the right</p> <p>9 word -- payables.</p> <p>10 MR. KALLANDER: Receivables.</p> <p>11 THE WITNESS: Receivables.</p> <p>12 BY MR. CHRISTMAS:</p> <p>13 Q Okay, the receivables from owing to SK Foods</p> <p>14 LP from the Cedenco entities, and you referenced a</p> <p>15 trust that became involved in that with respect to</p> <p>16 those receivables. Is the SSC&L Trust the trust to</p> <p>17 which you were referring?</p> <p>18 A I don't remember.</p> <p>19 MR. PETERSEN: Objection. Asked and answered,</p> <p>20 misstates his prior testimony.</p> <p>21 THE WITNESS: I don't remember the specific name.</p> <p>22 BY MR. CHRISTMAS:</p> <p>23 Q Can we go back to the first paragraph -- or</p> <p>24 the first page of the debt assignment agreement. The</p> <p>25 signature block is at variance with the name at the</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Well, the financial statements, if I</p> <p>2 understand it correctly, reflected the financial</p> <p>3 statements of SK Foods for the eight-month period</p> <p>4 ending June 30, 2007, reflected a receivable from the</p> <p>5 trust that we've defined earlier; is that correct?</p> <p>6 A Yes.</p> <p>7 Q Okay. And do you recall whether the amount</p> <p>8 reflected in the financial statements was the full</p> <p>9 face amount of the debt or whether it was discounted</p> <p>10 in any way?</p> <p>11 A I am not aware of any discounting.</p> <p>12 Q Was there any reserve established by the</p> <p>13 company for that financial period as a reserve for the</p> <p>14 uncollectibility of that debt?</p> <p>15 A Not that I'm aware of.</p> <p>16 Q Okay. As part of preparing the financial</p> <p>17 statements, did Moss-Adams review the recoverability</p> <p>18 of that receivable that was on the financial</p> <p>19 statement?</p> <p>20 A Yes.</p> <p>21 MR. LEWIS: Objection. Personal knowledge.</p> <p>22 BY MR. CHRISTMAS:</p> <p>23 Q Do you know personally what was done to</p> <p>24 review the collectibility of that amount?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 79</p> <p>1 top. And the name at the top is "SSC&L 2007 Trust."</p> <p>2 Is that the trust to which you were referring?</p> <p>3 A I don't remember.</p> <p>4 Q Do you know if those -- the entity signing</p> <p>5 and the entity described in the first paragraph of the</p> <p>6 document are the same entity?</p> <p>7 A No, I do not.</p> <p>8 MR. PETERSEN: Calls for speculation.</p> <p>9 BY MR. CHRISTMAS:</p> <p>10 Q Setting aside the name of the trust that is</p> <p>11 involved with the receivables due from the Australian</p> <p>12 and New Zealand companies -- I'll just refer to it</p> <p>13 then as the trust -- was that a revocable trust, to</p> <p>14 your knowledge?</p> <p>15 A My understanding was it was a revocable</p> <p>16 trust.</p> <p>17 Q And are there specific issues involved in</p> <p>18 auditing a revocable trust if it has an obligation</p> <p>19 that is then ultimately reflected on the balance</p> <p>20 sheet?</p> <p>21 MR. PETERSEN: Objection. It's vague and</p> <p>22 ambiguous.</p> <p>23 THE WITNESS: I would have to give that some</p> <p>24 additional consideration.</p> <p>25 BY MR. CHRISTMAS:</p>	<p style="text-align: right;">Page 81</p> <p>1 Q Okay. Can you tell me?</p> <p>2 A We looked at the underlying assets of</p> <p>3 Mr. Salyer.</p> <p>4 Q Okay. And how was the information presented</p> <p>5 to you about the underlying assets of Mr. Salyer?</p> <p>6 MR. PETERSEN: Objection. It's vague and</p> <p>7 ambiguous.</p> <p>8 THE WITNESS: We had -- in our work papers we had</p> <p>9 financial statements for his related entities, and I</p> <p>10 reviewed those financial statements for their</p> <p>11 substance.</p> <p>12 BY MR. CHRISTMAS:</p> <p>13 Q Do you know if those were part of the</p> <p>14 document production?</p> <p>15 A I don't think so.</p> <p>16 Q Did that process of review also involve</p> <p>17 looking at the assets of the trust itself?</p> <p>18 MR. LEWIS: Objection. Lack of personal</p> <p>19 knowledge.</p> <p>20 BY MR. CHRISTMAS:</p> <p>21 Q You can answer.</p> <p>22 A No.</p> <p>23 Q And is there a reason you don't -- with a</p> <p>24 revocable trust you don't look at the assets of the</p> <p>25 trust?</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 A I would have to consider that.</p> <p>2 Q If the trust is one entity, on the other</p> <p>3 hand -- or on the one hand, why, as an auditor, would</p> <p>4 you look at the assets of Mr. Salyer to review the</p> <p>5 collectability of that amount?</p> <p>6 A My understanding was that Mr. Salyer's assets</p> <p>7 stood behind the revocable trust.</p> <p>8 Q And how did you gain that understanding?</p> <p>9 A Conversations with Gary Perry.</p> <p>10 Q Did Mr. Perry provide anything in writing to</p> <p>11 confirm what you just said?</p> <p>12 A No.</p> <p>13 Q Who was it who provided the financial</p> <p>14 statements of the related entities of Mr. Salyer that</p> <p>15 were reviewed?</p> <p>16 A I don't know. I do know American Salyer's</p> <p>17 were provided by Mr. McCormick. I do have specific</p> <p>18 knowledge of that. The others I don't know.</p> <p>19 Q Salyer American Foods, is that -- what entity</p> <p>20 are you referring to?</p> <p>21 A I may not have the name correct, the produce</p> <p>22 company.</p> <p>23 Q After analysis of the information that</p> <p>24 Moss-Adams received regarding the collectibility of the</p> <p>25 receivable from the trust, was Moss-Adams satisfied</p>	<p style="text-align: right;">Page 84</p> <p>1 and ambiguous.</p> <p>2 BY MR. CHRISTMAS:</p> <p>3 Q Do you remember consider the report on the</p> <p>4 front to be separate from the financial statements?</p> <p>5 A Yes.</p> <p>6 Q And why is that?</p> <p>7 A The financial statements are the company's</p> <p>8 financial statements. The auditor's report is</p> <p>9 Moss-Adams's report.</p> <p>10 Q Understood.</p> <p>11 As of the date of the report, if we could</p> <p>12 turn to -- withdrawn. Let me fix this question.</p> <p>13 On page 8, could you move to the -- if I</p> <p>14 could draw your attention to the third paragraph,</p> <p>15 about five lines from the bottom. And it says there,</p> <p>16 "The partnership distributed the investments in</p> <p>17 foreign subsidiaries to the partners effective</p> <p>18 November 1, 2006, and sold the partnership's</p> <p>19 intercompany receivables to a revocable trust with</p> <p>20 common ownership with the partnership."</p> <p>21 With respect to the first statement in that</p> <p>22 sentence, by this point in time was there anything</p> <p>23 beyond the adjusting journal entries and the client</p> <p>24 representation letter that Moss-Adams had reviewed to</p> <p>25 determine the correctness of that first clause of that</p>
<p style="text-align: right;">Page 83</p> <p>1 that the receivable was fully collectible?</p> <p>2 A Yes.</p> <p>3 MR. CHRISTMAS: 56.</p> <p>4 (Deposition Exhibit 56 marked.)</p> <p>5 BY MR. CHRISTMAS:</p> <p>6 Q Mr. Nutley, the court reporter has handed you</p> <p>7 Exhibit 56 to your deposition. Do you recognize this</p> <p>8 document?</p> <p>9 A Yes.</p> <p>10 Q Can you tell me what it is?</p> <p>11 A The financial statements for SK Foods for the</p> <p>12 eight months ending June 30, 2007.</p> <p>13 Q Turn to page 3. Is this the final version,</p> <p>14 to your knowledge, of the report?</p> <p>15 A Yes.</p> <p>16 Q Can you turn to note 1, which is on page 8 of</p> <p>17 the document. Now, at this point in time the</p> <p>18 statements are issued as of January 15, 2008; is that</p> <p>19 correct?</p> <p>20 A The auditor's report is dated January 15,</p> <p>21 2008.</p> <p>22 Q And did the financial statements have a</p> <p>23 separate date or --</p> <p>24 A The financial statements --</p> <p>25 MR. PETERSEN: Objection. The question is vague</p>	<p style="text-align: right;">Page 85</p> <p>1 sentence?</p> <p>2 A Discussions with management --</p> <p>3 Q Okay.</p> <p>4 A -- in the course of the audit.</p> <p>5 Q And I'll ask you the same question with</p> <p>6 respect to the second clause of that sentence. Was</p> <p>7 there anything other than the client representation</p> <p>8 letter and the adjusting journal entries that</p> <p>9 Moss-Adams had reviewed to determine the accuracy of</p> <p>10 that second clause?</p> <p>11 A Discussions with management, and legal</p> <p>12 counsel and Mr. Perry were conversing with him as</p> <p>13 well.</p> <p>14 Q If we could turn to -- apart from -- just as</p> <p>15 a general matter, and I'm going to expand it to the</p> <p>16 entirety of the financial statements, apart from the</p> <p>17 management representation letter, what documents did</p> <p>18 you have to rely on to issue the financial statements</p> <p>19 from SK Foods?</p> <p>20 A There's a whole file of documents, hundreds.</p> <p>21 Q Has that file been produced, to your</p> <p>22 knowledge?</p> <p>23 A That file was reviewed to identify items that</p> <p>24 you requested in production.</p> <p>25 Q Can you turn to note 8 in the financial</p>

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<p>1 statements, which starts on page 16, I believe, of the</p> <p>2 internal number.</p> <p>3 Can you point to me where in this note, if I</p> <p>4 have the right place, the receivable from the trust,</p> <p>5 as we had defined it earlier in your testimony, is</p> <p>6 reflected?</p> <p>7 A It's on page 17.</p> <p>8 Q Okay. And what is the amount that is</p> <p>9 reflected as the receivable from the trust?</p> <p>10 A 18,293,000.</p> <p>11 Q Okay. There's also a reference there to an</p> <p>12 irrevocable trust. Do you see that there?</p> <p>13 A Yes.</p> <p>14 Q Do you know the identity of that trust?</p> <p>15 A Not the specific name as I sit here.</p> <p>16 Q Do you know the purpose of that trust?</p> <p>17 MR. PETERSEN: Objection. Calls for speculation,</p> <p>18 no foundation.</p> <p>19 BY MR. CHRISTMAS:</p> <p>20 Q You can answer.</p> <p>21 A Not as I remember today.</p> <p>22 Q Just as a matter of housekeeping, Exhibit 93</p> <p>23 that we had renumbered, did you receive, ultimately,</p> <p>24 a -- if you could turn to that.</p> <p>25 We saw previously Mr. Salyer's signature to</p>	<p>1 you provide?</p> <p>2 A No.</p> <p>3 Q Did the subject -- do you recall having any</p> <p>4 discussions with anyone at Stout & Davidson about the</p> <p>5 prior year's audit?</p> <p>6 A Yes.</p> <p>7 Q Okay. Do you recall who you had those</p> <p>8 discussions with?</p> <p>9 A I don't remember the name.</p> <p>10 Q Okay. Do you recall the topics of the</p> <p>11 conversations?</p> <p>12 A Successor auditor inquiries.</p> <p>13 Q Do you recall whether the subject matter of</p> <p>14 note 1 of the financial statements ever came up in</p> <p>15 those conversations?</p> <p>16 A No.</p> <p>17 Q Were documents ultimately provided to Stout &</p> <p>18 Davidson?</p> <p>19 A Yes.</p> <p>20 Q Who was responsible at Moss-Adams for</p> <p>21 gathering and providing those documents?</p> <p>22 A I was.</p> <p>23 Q Did you keep a log or any other record of</p> <p>24 what documents were provided to Stout & Davidson?</p> <p>25 A I don't know.</p>
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<p>1 the client representation letter. Does this document</p> <p>2 reflect that you received signatures for the other</p> <p>3 signatories to the client representation letter?</p> <p>4 A Yes.</p> <p>5 Q Okay. Now, you testified previously that</p> <p>6 another firm took over from yours to prepare the next</p> <p>7 set of financial statements for the following fiscal</p> <p>8 year after June 30, 2007. Did you have -- did</p> <p>9 Moss-Adams have any contact with that?</p> <p>10 MR. LEWIS: Objection. Lack of personal</p> <p>11 knowledge.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. CHRISTMAS:</p> <p>14 Q And what was the name of the firm?</p> <p>15 A Stout & Davidson.</p> <p>16 Q And do you recall, did you personally receive</p> <p>17 any contact from them in transitioning the work?</p> <p>18 A Yes.</p> <p>19 Q And who contacted you?</p> <p>20 A I don't remember the person's name.</p> <p>21 Q Okay. Do you recall what you were -- were</p> <p>22 you requested to provide any documents to Stout &</p> <p>23 Davidson?</p> <p>24 A Yes.</p> <p>25 Q Okay. And do you recall what they requested</p>	<p>1 Q It is the practice of Moss-Adams, when</p> <p>2 another firm succeeds Moss-Adams, to keep a log of</p> <p>3 what documents are provided to the successor</p> <p>4 accounting firm?</p> <p>5 A Not that I'm aware of.</p> <p>6 Q Do you recall if there were any e-mail</p> <p>7 communications between Moss-Adams and Stout &</p> <p>8 Davidson?</p> <p>9 A No.</p> <p>10 MR. CHRISTMAS: 65.</p> <p>11 (Deposition Exhibit 65 marked.)</p> <p>12 BY MR. CHRISTMAS:</p> <p>13 Q Mr. Nutley, the court reporter has handed you</p> <p>14 Exhibit 65 to your deposition. Have you ever seen</p> <p>15 this document before?</p> <p>16 A Not that I recollect.</p> <p>17 Q Okay. Have you ever seen any financial</p> <p>18 statements of SK Foods Australia Proprietary Limited?</p> <p>19 A Yes.</p> <p>20 Q And do you recall what years were covered by</p> <p>21 the financial statements that you saw?</p> <p>22 A October 31st, 2006.</p> <p>23 Q Now, do you see the date on the front of this</p> <p>24 document?</p> <p>25 A Yes. This is October 31st, 2008.</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">Page 90</p> <p>1 Q Could I draw your attention to page 2 of the 2 document. And further drawing your attention to the 3 top part of page 2, where on the left column there are 4 the words "Holding company" and the right column "SK 5 Foods LP." 6 Now, as of October 31, 2008, was SK Foods LP 7 the owner of SK Foods Australia Proprietary Limited to 8 your understanding? 9 MR. PETERSEN: Objection. Calls for a legal 10 conclusion, calls for speculation. 11 THE WITNESS: I have no idea. 12 BY MR. CHRISTMAS: 13 Q But the Moss-Adams financial statements, am I 14 correct in understanding, reflected a different owner 15 of the Cedenco entities from SK Foods LP; is that 16 correct? 17 A As of June 30th, 2007. 18 Q To your knowledge, did the ownership of the 19 Cedenco entities change back to SK Foods LP? 20 A I have no knowledge. 21 MR. CHRISTMAS: 68. 22 (Deposition Exhibit 68 marked.) 23 MR. CHRISTMAS: Let's mark 69 while we're at it. 24 (Deposition Exhibit 69 marked.) 25 BY MR. CHRISTMAS:</p>	<p style="text-align: right;">Page 92</p> <p>1 The document speaks for itself, may call for a legal 2 conclusion. And he's testified that he's never seen 3 the document before, so I don't see how you can ask 4 him to testify about what the document says. 5 THE WITNESS: It's beyond a period of time that I 6 have knowledge of the events. 7 BY MR. CHRISTMAS: 8 Q So you -- withdrawn. 9 Well, if we could roll back to the previous 10 year. With respect to the previous year, is it your 11 understanding that the SSC&L Trust was the entity that 12 owed the receivables to SK Foods LP? 13 A I don't -- 14 MR. PETERSEN: Objection. It's vague and 15 ambiguous. He's never testified to a knowledge of the 16 SSC&L Trust. 17 THE WITNESS: I don't recollect the name of the 18 revocable trust. 19 BY MR. CHRISTMAS: 20 Q Can you turn to Exhibit 72. 21 MR. NUTI: I need a copy of that, Robert. 22 MR. CHRISTMAS: Sorry. 23 (Deposition Exhibit 72 marked.) 24 BY MR. CHRISTMAS: 25 Q Have you ever seen this document before?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q Mr. Nutley, the court reporter has handed you 2 Exhibits 68 and 69 to your deposition. Do you 3 recognize either of these documents? 4 A No. 5 Q You've never seen them before? 6 A No. 7 MR. CHRISTMAS: Let's mark 71. 8 (Deposition Exhibit 71 marked.) 9 BY MR. CHRISTMAS: 10 Q Mr. Nutley, the court reporter has handed you 11 Exhibit 71 to your deposition. Do you recognize this 12 document? 13 A No. 14 Q Okay. Could you read it over. 15 A Yes, I did. 16 Q Oh, you did? 17 A Uh-huh. 18 Q Does this document, in terms of the identity 19 of the intercompany -- you use the word "receivables," 20 so I'll use that. 21 A Yes. 22 Q Does this confirm your understanding of the 23 structure of the receivables originally owing from the 24 Cedenco entities? 25 MR. PETERSEN: Objection. Calls for speculation.</p>	<p style="text-align: right;">Page 93</p> <p>1 A No. 2 MR. CHRISTMAS: This is 74. 3 (Deposition Exhibit 74 marked.) 4 BY MR. CHRISTMAS: 5 Q Mr. Nutley, the court reporter has handed you 6 Exhibit 74 to your deposition. Have you ever seen 7 this document before? 8 A No. 9 Q Let me ask you another question. First, if I 10 could draw your attention to the entities that are 11 named in the first paragraph of this document. You 12 see there that Cedenco Foods Limited, a New Zealand 13 Company, is in the first paragraph? 14 A Yes. 15 Q Have you ever seen a document similar to this 16 in which SK Foods Australia is listed in the first 17 paragraph? 18 A No. 19 Q Have you seen an unsigned version of this 20 document? 21 A No. 22 Q Or have you ever seen an unsigned 23 investigation form of this document in which SK Foods 24 Australia is listed in the first paragraph? 25 A No.</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1 MR. CHRISTMAS: This is 75. 2 (Deposition Exhibit 75 marked.) 3 BY MR. CHRISTMAS: 4 Q Mr. Nutley, the court reporter has just 5 handed you a document marked as Exhibit 75 to your 6 deposition, which is a series of e-mails, starting 7 with an e-mail from a Nick Frankish of April 3, 2009, 8 2:35 p.m., and ends at the top with an e-mail from 9 Mr. McCormick, dated April 5, 2005, 8:39 p.m. 10 First let me ask you, have you ever seen -- 11 withdrawn. 12 Who is Mr. Frankish, if you know? 13 A I know the name. 14 Q Okay. Anything beyond the name? 15 A I believe he was a financial officer of 16 Cedenco. 17 Q Okay. Did you ever have any conversations 18 with Mr. Frankish? 19 A Not sure. 20 Q Do you see Mr. McCormick at the top there 21 says, "Dan and Gary originated these transactions at 22 the time that notes were transferred to the SSC&L 23 Trust." Would you agree with his use of the word 24 "originated"? 25 A No.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q Yes, please. 2 A Yes, I've read it. 3 Q If we could turn back to the actual first 4 e-mail now, now that you've read that. 5 Do you see line 3? 6 MR. NUTI: Robert, can you say the to, from, and 7 the date and the time so we know exactly which one 8 you're talking about. 9 MR. CHRISTMAS: Yes, of course. We're talking 10 now about the initial e-mail in this chain, which is 11 dated April 3, 2009, at 2:35 p.m. 12 MR. NUTI: Thank you. 13 BY MR. CHRISTMAS: 14 Q Now, if you turn to the page that is 15 Bates-numbered Chapter 15, 1303 at the bottom. Is 16 that where you are? 17 A Uh-huh. 18 Q Okay. Item No. 3 under the chart on that 19 page, in sort of the legend -- yeah, your counsel has 20 pointed it out to you. 21 Do you know what is represented there by 22 "minority interest"? Do you recall if there was an 23 amount that reflected any kind of loss or discount 24 relating to minority interest? 25 MR. PETERSEN: Objection. No foundation, calls</p>
<p style="text-align: right;">Page 95</p> <p>1 Q Can you tell me, if you would look at Mr. -- 2 if you would look at the e-mail immediately below, can 3 you tell me what your role was in the transactions 4 that are referred to in Mr. Frankish's e-mail of 5 April 5, 2009? 6 MR. PETERSEN: Objection. It's vague and 7 ambiguous. The document speaks for itself. 8 THE WITNESS: I have to study the document. It 9 looks -- there's a whole series of questions here. 10 BY MR. CHRISTMAS: 11 Q Could you just look at the first e-mail. 12 A Which is the first e-mail, please? 13 Q I'm sorry. The one immediately below 14 Mr. McCormick's. 15 A From Mr. Frankish? 16 Q Yes. 17 MR. PETERSEN: Objection. It mischaracterizes 18 the document. That's not the first e-mail. 19 BY MR. CHRISTMAS: 20 Q I mean the one that is on the first page of 21 the exhibit. 22 A What would you like me to do? 23 Q Could you read the e-mail first. 24 A All right. Do you want me to continue 25 reading on to the second page?</p>	<p style="text-align: right;">Page 97</p> <p>1 for speculation. 2 THE WITNESS: I recollect there are minority 3 interests in the financials. I don't recollect this 4 one specifically. 5 BY MR. CHRISTMAS: 6 Q Okay. Did you ever provide any information 7 to the auditors of the Cedenco entities in Australia 8 or New Zealand? 9 A Not that I recollect. 10 Q Did they ever provide any information to you? 11 A Yes. 12 Q And did they provide it directly or through 13 SK Foods? 14 A Through management of SK Foods. I'm sorry, 15 there is one -- there are two letters. You're asking 16 me about Australia? 17 Q Yes. 18 A Okay. There's one letter from the auditors 19 from Australia in the 10-31-06 audit file related to 20 their statement of independence related to Cedenco 21 Foods, That was given to us directly. 22 Q And what does that refer to, a statement of 23 independence? 24 A An auditor needs to be independent of their 25 clients. And when you're dealing with auditors in a</p>

25 (Pages 94 to 97)

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<p style="text-align: right;">Page 98</p> <p>1 financial statement, you need to be satisfied that 2 they are independent related to the entity they are 3 reporting upon. 4 Q Okay. You can put that exhibit aside. 5 MR. CHRISTMAS: This is 82. 6 (Deposition Exhibit 82 marked.) 7 BY MR. CHRISTMAS: 8 Q Mr. Nutley, the court reporter has handed you 9 Exhibit 82 to your deposition. Have you ever seen 10 this copy before? 11 A No. 12 Q Mr. Nutley, can you tell me if, to your 13 knowledge, Moss-Adams is involved in any litigation 14 with any of the banks who lent money to SK Foods LP? 15 A I have no knowledge of that. 16 Q Is Moss-Adams involved in any litigation with 17 the trustee of SK Foods LP. 18 A I have no knowledge of it. 19 MR. CHRISTMAS: I'm finished. 20 EXAMINATION 21 BY MR. NUTI: 22 Q I just have a follow-up on one issue. 23 In response to one of the questions of 24 support for the transactions we were talking about and 25 focusing on, you mentioned that Gary Perry provided</p>	<p style="text-align: right;">Page 100</p> <p>1 Q I just wanted to be clear about that. 2 MR. PETERSEN: I would like to mark this as next. 3 It may have been marked in another deposition. 4 MR. CHRISTMAS: This is going to be 94. No, no. 5 It's 95. 6 (Deposition Exhibit 95 marked.) 7 BY MR. PETERSEN: 8 Q The document that has been marked as 9 Exhibit 95, Mr. Nutley, is a one-page document, and it 10 looks like there are two e-mails on there, the first 11 being at the bottom from Mr. McCormick, apparently to 12 you, and then one at the top. 13 Would you look at this and tell me if you've 14 ever seen this before. 15 A Yes. 16 Q You recall receiving the e-mail from 17 Mr. McCormick? 18 A Yes. 19 Q And that's your response to him on 20 December 17? 21 A Yes. 22 Q Okay. And you wrote there, "Yes, transfer 23 needs to be effective 11-1-06," correct? 24 A Yes. 25 Q What did you mean by that statement?</p>
<p style="text-align: right;">Page 99</p> <p>1 some information to Moss-Adams in support of those 2 transactions; is that correct? 3 A I had multiple conversations with Gary Perry. 4 Q Did he provide any written legal opinion as 5 to the transactions? 6 A No. 7 Q Everything was all oral? 8 A Yes. He sent me a draft -- I already 9 testified I believe he sent my a draft of the 10 revocable trust. But it was unsigned, so I didn't 11 retain it. 12 Q So nothing beyond that in writing from 13 Mr. Perry on the issue? 14 A No. 15 MR. NUTI: I have no other questions. 16 EXAMINATION 17 BY MR. PETERSEN: 18 Q Mr. Nutley, I just have a few questions. If 19 you could look back at Exhibit 75. This is the series 20 of e-mails dated in April of 2009. 21 A Yes. 22 Q Have you got that in front of you? 23 A Yes. 24 Q Have you ever seen any of these before? 25 A No.</p>	<p style="text-align: right;">Page 101</p> <p>1 A That the transfer of the shares and the 2 interco receivables needed to be effective 3 November 1st, 2006. 4 Q Why did you believe they needed to be 5 effective November 1, 2006? 6 A To accomplish the company's strategy of not 7 having to consolidate the Cedenco entities in the 8 June 30, 2007, financial statements. 9 Q So if the transfer had been effective at any 10 date after November 1, 2006, then it would have had to 11 have been reflected in the consolidated financial 12 statements? 13 A Any activity of the underlying subsidiaries 14 after October 31st, 2006, would then have to be 15 consolidated because the ownership still existed in 16 your hypothetical. 17 Q Okay. If could you look back at Exhibit 56, 18 which is the Moss-Adams final report. Do you have 19 that in front of you now? 20 A Yes. 21 Q On page 8, I think Mr. Christmas was asking 22 you some questions about the third paragraph there. 23 And maybe two sentences -- or three sentences from the 24 bottom of that paragraph, where it says, "The 25 partnership distributed the investments in foreign</p>

26 (Pages 98 to 101)

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<p style="text-align: right;">Page 102</p> <p>1 subsidiaries to the partners effective November 1, 2 2006, and sold the partnership's intercompany 3 receivables to a revocable trust with common ownership 4 of the partnership." 5 You recall he asked you questions about that? 6 A Yes. 7 Q This is the same point you were describing in 8 the e-mail of Exhibit 95 that we were just looking at; 9 is that correct? 10 A The effective date, yes. 11 Q Mr. Christmas asked you, with regard to this 12 document, about what you had been provided from the 13 company that reflected or verified this transfer 14 effective November 1, 2006. Do you recall those 15 questions? 16 A Yes. 17 Q And I know you said that adjusting journal 18 entries and that you spoke to management, and the 19 financial statements themselves; is that correct? 20 A Yes, and the client representation letter. 21 Q Right, the client representation letter. Was 22 that, from your perspective, satisfactory for what you 23 needed to be comfortable about the effectiveness of 24 that transaction? 25 A Yes.</p>	<p style="text-align: right;">Page 104</p> <p>1 2 3 4 5 6 7 8 9 10 I, DAN NUTLEY, do hereby declare under 11 penalty of perjury that I have read the foregoing 12 transcript; that I have made any corrections as appear 13 noted, in ink, initialed by me, or attached hereto; that 14 my testimony as contained herein, as corrected, 15 is true and correct. 16 EXECUTED this ____ day of _____, 17 20____, at _____, _____. 18 (City) (State) 19 20 21 22 _____ 23 DAN NUTLEY 24 25</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. PETERSEN: I have nothing further. 2 MR. CHRISTMAS: Nothing else. 3 THE REPORTER: Did anybody want copies? 4 MR. NUTI: Yes. 5 MR. CHRISTMAS: Off the record. 6 MR. KALLANDER: Mr. Nutley will review and sign 7 the deposition. 8 MR. PETERSEN: Copy, please. 9 MR. KALLANDER: I do not need a copy. 10 MR. LEWIS: Pat Lewis from Bank of Montreal. I 11 would like a copy of the transcript, please. 12 // 13 // 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 105</p> <p>1 I, the undersigned, a Certified Shorthand 2 Reporter of the State of California, do hereby certify: 3 That the foregoing proceedings were taken 4 before me at the time and place herein set forth; that 5 any witnesses in the foregoing proceedings, prior to 6 testifying, were duly sworn; that a record of the 7 proceedings was made by me using machine shorthand which 8 was thereafter transcribed under my direction; that the 9 foregoing is a true record of the testimony given. 10 Further, that if the foregoing pertains to 11 the original transcript of a deposition in a Federal 12 Case, before completion of the proceedings, review of 13 the transcript [X] was [] was not requested. 14 I further certify that I am neither 15 financially interested in the action nor a relative or 16 employee of any attorney or party to this action. 17 IN WITNESS WHEREOF, I have this date 18 subscribed my name. 19 20 DATED: _____ 21 22 23 _____ 24 JODI L. BOSETTI 25 CSR NO. 11316, RPR</p>

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version 07-01

SK Foods, LP
A-07 Engagement Review Memo - Audit v07-01
June 30, 2007

We have re-read the planning memorandum and reviewed the working papers, including programs and questionnaires, related to the critical audit areas and unusual accounting matters in connection with our audit of the consolidated financial statements of SK Foods LP and subsidiaries for the year ended June 30, 2007.

Changes Subsequent to Planning

There have been no significant changes to the audit plan subsequent to planning.

Delegation of Engagement Review

Significant portions of the review was delegated by the Engagement Reviewer, Mr. Nutley, to Mr. Roger Courts. Due to scheduling conflicts and client delays, certain work was completed by Roger, and reviewed by Dan. This work did not impact his role in delegated engagement review.

Consideration of Fraud Risk Factors

During the planning, we identified fraud risk factors relating to covenant compliance (fraud risk financial reporting). We also identified inherent risk factors in revenue recognition (bill and holds, although typical for industry), inventory, the natural related party transactions from integrated operations and client turnover. As result of the identification of these risk factors, our overall response was to increase the involvement of the audit senior manager in all phases, and set tolerable errors and scopes at a lower level. The detail procedures documented in SAS 99 memo were completed as planned.

Critical Audit Areas Including Significant Findings or Issues

As anticipated, the critical audit areas were AR and revenue, inventories, FIN46(R) and bank financing.

For AR, we sent confirms of individually significant (ISI) customers balances with \$9.8 million (40% of trade AR total \$21 mil) and CMA sampled another 34 on invoice item basis. We received 1 of ISI and 29 of the sample confirms (exceptions not significant, differences were tested or projected as errors). Alternative procedures performed on all non-responses, primarily to cash receipts. The 2 ISI non-response customers, Kraft and B & G Foods, totaled \$4.3 million. We tested subsequent cash receipts for substantially all of these 2 balances. We concluded the results were sufficient to support AR. SK does not typically have an allowance for bad debts. We tested total AR subsequent cash receipts on some of the more significant balances outstanding greater than 60 days (approx \$1.7 million or 9% of trade A/R). A/R turn remains fairly consistent and 90% is less than 30 days outstanding, there does not appear to be any material collection issues.

For Revenue, there are significant Bill & Hold (B&H) contracts for bulk paste and diced tomato product, which is very typical for this industry. This activity is generally focused after the packing season in October. Per our expectations there was still bill and hold inventory on hand and bill and hold receivables recorded as of October 2006 had been collected. There were no significant new bill and hold contracts subsequent to October 2006. MA sent confirmations to customers confirming bill and hold inventory on hand to test for understatement of the customers inventory. In addition to the significant cash receipt testing above, we examined contracts and evaluated revenue recognition as proper under GAAP guidance. We also examined the major packaged products contracts (eg cans, plastic and glass processed tomato sauces and salsa's). Analytical procedures included comparison to volumes in inventory rollforwards and

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pricing to contracts and invoices.

For Inventory, we observed client counts at all 3 SK locations on various dates subsequent to year-end. We did not observe at year-end because the client did not decide to change their year-end until after June 30, 2007. MA went out and made test counts and then reconciled them to inventory counts as of the date of the observation. Then MA was able to roll back inventory to June 30, 2007. Due to the confusion surrounding the inventory counts MA took many additional counts and observed 100% of the Lemoore location.

We compared valuation of finished goods to last years audit work. There was minimal production after 10/31/07. As expected, costs of finished goods were consistent with 10/31/07 valuation. Each years pack is substantially completed by 10/31 each year. Cans and plastic are packaged from the pack through the year. Overhead from 11/1 to 6/30 of the processing facilities is primarily preparation for the next seasons pack starting in the summer. The Company accumulates these cost in the excel costing model. Some costs are charged to the period with the majority carried on the balance sheet as unapplied overhead. We compared costs accumulated to general ledger accounts and prior year costs and found them consistent. We tested recoverability of unapplied overhead by reviewing prior year revenue and costs. Current year costs would have been recoverable based on historical experience and market for bulk tomato products has risen for the 2007 pack. We concluded unapplied overhead costs would be recovered from 2007 pack.

A full analysis of the Company's relationships for FIN46(R) was performed in the prior year. The client completed analysis of the Farms Group, concluding while they were VIE's, the owners (Scott Salyer and daughter trusts) were the primary beneficiaries, not SK. We concurred and obtained Admin consultation. Colusa and Aviation were concluded to be VIE's with SK as the primary beneficiary and were consolidated. There have been no significant reconsideration events in the current year that would cause consolidation under FIN 46(R).

Effective November 1, 2006 the Company distributed their investments in the New Zealand and Australia subsidiaries to the Partners at the carrying value of the investments. In addition, the Company sold receivables due from the subsidiaries to a revocable trust. See analysis at A-19.05.

Subsequent to year-end the Company entered into an Amended and Restated credit agreement with Harris Bank. The new amendment increased both the term loan and the revolver to \$100,000,000 and modified the covenant requirements. We obtained the new agreements and disclosed the subsequent event in the footnotes to the financial statements.

Unusual Accounting Matters

Due to client staffing issues and workload, a high number of adjustments were identified during the audit. Most related to inventory and majority were identified by the client during their closing process. Most all audit identified adjustments were made. We concluded client was able to accomplish accurate reporting and our audit work was sufficient to identify material errors.

Control Deficiencies Identified

During the course of the audit we encountered several audit adjustments and passed audit adjustments. These adjustments were the result of three observations, there is not a CFO, there is not enough qualified accounting staff and over reliance on Excel spreadsheets. All of these matters were deemed to be material weaknesses and were reported in the SAS 112 letter.

Final Materiality Judgment

The preliminary estimate of materiality for planning purposes was \$750,000. This amount remains appropriate for a final judgment of materiality.

Passed Adjustments

As detailed on A-03.01, the audit disclosed possible adjustments not made that, if recorded, would increase net income \$564k (including reversals from prior year), decrease current assets \$781k, decrease non-current assets by \$272k and decrease current liabilities by \$317k. The client has decided not to record these differences on the basis the effect is not material. We concur in that conclusion. Our evaluation included an acknowledgment of Firm policy at AS 140, and consideration whether the individual and cumulative effect of the passed adjustments and unposted differences represented potential reportable conditions or evidence a fraud may exist (we concluded they did not).

Final Analytical Review

We have analytically reviewed the final financial statements and believe they conform to our expectations and indicate no unusual relationships or results that have not been subjected to appropriate audit procedures.

Consultation

Consultation was performed for the EDP review performed by Northwest Consulting summarized at A-18. There were no other transactions or circumstances that required consultation pursuant to QC 140B.

Conclusion

Based on our review, we are satisfied that the working papers were adequately prepared and reviewed and that they support our unqualified opinion on the consolidated financial position of SK Foods LP and subsidiaries as of June 30, 2007 and the results of operations and cash flows for the period then ended in compliance with Firm and professional standards.

	Name	Date
Preparer:	/s/ Roger Coutts	1/10/08
In Charge:	/s/	
Engagement Reviewer	/s/ Dan Nutley	1/10/08
Concurring Reviewer:	/s/ Randy Fenich	1/14/08
Other Reviewer:	/s/	

January 15, 2008

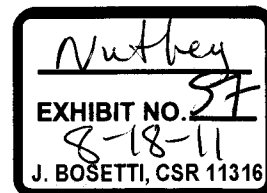
Moss Adams LLP
3121 March Lane
Stockton, California

We are providing this letter in connection with your audit of the consolidated balance sheet of SK Foods, LP (a California limited partnership), and its subsidiaries (collectively, the "Company"), as of June 30, 2007 and for the eight month period then ended for the purpose of expressing an opinion as to whether the consolidated financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of SK Foods, LP and its subsidiaries in conformity with accounting principles generally accepted in the United States of America. We confirm that we are responsible for the fair presentation in the consolidated financial statements of financial position, results of operations, and cash flows in conformity with generally accepted accounting principles.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, as of the date of this letter, the following representations made to you during your audit.

1. The financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America.
2. We have made available to you all—
 - a. Financial records and related data.
 - b. Minutes of the meetings of stockholders, directors, and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared.
3. There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in financial reporting practices, except as discussed in number 15 under bank compliance.
4. There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements.
5. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud.
6. We have no knowledge of any fraud or suspected fraud affecting the entity involving—



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Moss Adams LLP

Page 2

- a. Management,
 - b. Employees who have significant roles in internal control, or
 - c. Others where the fraud could have a material effect on the financial statements.
7. We have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators or others.
 8. The Company has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities, except the subsequent bank refinancing discussed below.
 9. We believe that the effects of the uncorrected financial statement misstatements summarized in the schedule below are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

SUMMARY OF UNCORRECTED FINANCIAL STATEMENT MISSTATEMENTS

Account #	Account Description	Debit	Credit
Proposed JE # 1			
To pass on recording an adjustment for \$80K known and \$562,500 projected errors of expense improperly recorded to CII?			
5470-01-590	RENT/LEASE-GENERAL	622,500	
1520-00-000	CONSTRUCTION IN PROGRESS		622,500
Total		622,500	622,500
Proposed JE # 6			
To pass on an adjustment to legal expense for refund received from O'Malley & Myers in Aug 2007			
1205-00-000	ACCOUNTS RECEIVABLE	122,321	
8720-80-800	LEGAL SERVICES -GENERAL		122,321
Total		122,321	122,321
Proposed JE # 20			
To pass on write-off of various accrued receivables			
4000-50-000	PRODUCT SALES - FOB PLANT	482,560	
1130-00-000	ACCOUNTS RECEIVABLE		482,560
Total		482,560	482,560
Proposed JE # 25			
To pass on recording an adjustment to write off receivable from Lifestar resulting from product claim/return			
4160-50-000	CLAIMS & ALLOWANCES	56,000	
1200-00-000	ACCOUNTS RECEIVABLE		56,000
Total		56,000	56,000

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SUMMARY OF UNCORRECTED FINANCIAL STATEMENT MISSTATEMENTS-continued

Account #	Account Description	Debit	Credit
Proposed JE # 26			
To pass on recording B&B sales made to Michelina's in July that should have been recorded as of 6/30/07			
1200-00-000	ACCOUNTS RECEIVABLE	652,400	
4200-50-000	COGS COMMODITY - PLANT	319,836	
4200-51-000	COGS COMMODITY - PLANT	108,579	
1326-00-000	FG INV OP OVERHEAD @ STD		428,415
4000-50-000	PRODUCT SALES - FOB PLANT		121,866
4000-51-000	PRODUCT SALES - FOB PLANT		530,534
Total		1,080,815	1,080,815
Proposed JE # 27			
To pass on recording an entry to accrue invoices in accordance with GAAP related to services and goods received during the month of June but that were not recorded in the G/L until July			
1315-00-000	UNAPPLIED OVERHEAD	155,956	
2130-00-000	ACCOUNTS PAYABLE - ACCRUED		155,956
Total		155,956	155,956
Proposed JE # 28			
To pass on recording an adjustment to eliminate liability related to the issuance of the 6/30/07 payroll that should have been posted when payroll checks were issued on 6/29			
2200-00-000	ACCRUED PAYROLL	687,196	
1019-00-000	SKF PR-BKWEST-087000774		473,202
1460-00-000	FRINGE PROVISION		213,994
Total		687,196	687,196
Proposed JE # 29			
CCC PAJE entry to pass on reversing travel expense that should not have been expensed in fiscal period 2007			
1418-00-000	PRE-PAID TRAVEL SERVICES	107,500	
8441-80-800	TRAVEL SERVICES		107,500
Total		107,500	107,500
Proposed JE # 30			
To pass on adjusting ending SK bulk paste inventory for an unidentified variance in per unit cost (year-end versus beginning of year)			
4200-50-000	COGS COMMODITY - PLANT	351,650	
1320-00-000	FG INV COMMODITY @ STD		351,650
Total		351,650	351,650

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SUMMARY OF UNCORRECTED FINANCIAL STATEMENT MISSTATEMENTS-continued

Account #	Account Description	Debit	Credit
Proposed JE # 31			
To pass on recording an adjustment to write-off accounts receivable at 6/30/07 related to customer short pays (B&G and Kraft) that were written off subsequent to yearend.			
4160-50-000	CLAIMS & ALLOWANCES	26,940	
1200-00-000	ACCOUNTS RECEIVABLE		26,940
Total		26,940	26,940
Proposed JE # 36			
To pass on recording the fair value of the BMO interest rate swap.			
1710-50-000	OTHER LONG TERM ASSETS	351,000	
9960-80-900	OTHER MISCELLANEOUS INCOME		351,000
Total		351,000	351,000

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10. The following have been properly recorded or disclosed in the financial statements:

- a. Related-party transactions, including sales, purchases, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties.
- b. Guarantees, whether written or oral, under which the Company is contingently liable.
- c. Significant estimates and material concentrations known to management that are required to be disclosed in accordance with the AICPA's Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*. [Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.]

Significant estimates include the allowance for doubtful accounts and accrued losses under contractual sales commitments. Material concentrations include certain customer sales and accounts receivable.

11. We are responsible for the fair presentation of the additional consolidating information accompanying the basic consolidated financial statements that are presented for the purpose of additional analysis of the basic financial statements.

12. There are no—

- a. Violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency.
- b. Possible illegal acts brought to the attention of management.
- c. Unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with Financial Accounting Standards Board (FASB) Statement No. 5, Accounting for Contingencies.
- d. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by FASB Statement No. 5.

13. The Company is party to various legal matters arising in the normal course of business. Management does not believe the outcome of these matters will have a material adverse effect on the Company's financial position or results of operations. Management believes the RICO claims have no merit and will vigorously defend the Company against such claims.

14. The Company has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, except as disclosed in the financial statements under debt and leases.

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15. The Company has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance, except for the following:

As of June 30, 2007, the Company was out of compliance with loan covenants. Subsequent to year-end the Company entered into an Amended and Restated Credit Agreement, dated September 28, 2007, increasing the loan commitment and modifying the loan covenants. As of the date of this letter, the Company is in compliance with the loan covenants as specified in the September 28, 2007 amendment.

16. We have disclosed to you any change in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal year ended June 30, 2007 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.
17. With regard to the fair value measurements and disclosures of certain assets, liabilities, and specific components of equity, we believe that:
- a. The measurement methods, including the related assumptions, used in determining fair value were appropriate and were consistently applied.
 - b. The completeness and adequacy of the disclosures related to fair values are in conformity with accounting principles generally accepted in the United States of America.
 - c. No events have occurred subsequent to June 30, 2007 that requires adjustment to the fair value measurements and disclosures included in the financial statements.
18. The Company, using its best estimates based on reasonable and supportable assumptions and projections, reviews for impairment of long-lived assets in accordance with FASB Statement No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, and goodwill and certain intangible assets in accordance with FASB Statement No. 142, *Goodwill and Other Intangible Assets*. The financial statements referred to above reflect all adjustments required by FASB Statements 144 and 142 as of June 30, 2007.
19. The cost method is used to account for the Company's investment in a captive insurance company because the Company does not have the ability to exercise significant influence over the investee's operating and financial policies. All related worker's compensation liabilities have been properly recorded. All relevant commitments and contingencies under the captive insurance arrangement have been disclosed.
20. The Company adopted FASB Interpretation ("FIN") 46(R), *Consolidation of Variable Interest Entities*, as of November 1, 2005. We have evaluated all financial interests and contractual arrangements with related parties, de facto agents and other entities under FIN 46(R). We have considered both implicit and explicit variable interests in (a) determining whether potential variable interest entities (VIE) should be considered VIEs, (b) considering expected losses and residual returns, and (c) determining which party, if

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any, is the primary beneficiary.

We determined that Colusa County Canning and SK Aviation are variable interest entities and the Company is the primary beneficiary, and these entities have been properly consolidated in the financial statements as of June 30, 2007. We determined that the Company holds variable interests in SS Farms, LLC, SSC Farming, LLC, SS Farms Australia Pty. Ltd., Blackstone Ranch, and Central Valley Shippers and that the Company's partners or related trusts are the primary beneficiaries of these entities. All information regarding these VIEs and transactions with these VIE's have been properly recorded and disclosed in the financial statements. We determined the Company has no variable interest in Salyer American Fresh Foods.

We have made available all relevant information about financial interests and contractual arrangements with related parties, de facto agents and other entities, including but not limited to, their governing documents, equity and debt instruments, contracts, leases, guarantee arrangements, and other financial contracts and arrangements. The information we provided about financial interests and contractual arrangements includes information about all transactions, unwritten understandings, agreement modifications, and written and oral side agreements, if any.

Regarding entities in which the Company has variable interests (implicit and explicit), we have considered and provided all information about events and changes in circumstances that could potentially cause reconsideration about whether the entities are VIEs or whether the Company is the primary beneficiary or has a significant variable interest in the entity.

We have distributed our investments in foreign subsidiaries (Cedenco entities) to the partners and sold the net related intercompany receivables to a revocable trust with common ownership with the Company effective November 1, 2006. We determined that the Company does not have a variable interest in the Cedenco entities.

The related party receivable from the sale of the Cedenco intercompany receivables is an asset of future benefit to the Company. The revocable trust and its grantor have sufficient assets to support the receivable.

21. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, line of credit, or similar arrangements have been properly disclosed in the financial statements.
22. Financial instruments with significant individual or group concentration of credit risk have been appropriately identified, properly recorded, and disclosed in the financial statements.
23. The Company believes that it has properly identified all derivative instruments and any embedded derivative instruments that require bifurcation. The only derivatives consist of the Partnership's interest rate swap. This derivative instrument is not afforded hedge accounting treatment as outlined in SFAS No. 133 and, as a result, the changes in the fair

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value of the contract is recorded directly to earnings and is included in other income/expenses. The fair value of the derivative instrument as reflected in the accompanying consolidated balance sheets as of June 30, 2007, is \$119,000 for the swap, which is included in prepaid and other current assets. The fair values of this instrument has been determined based on prevailing market prices or by using financial models that we believe are the most appropriate models for valuing such instruments and that incorporate market data and other assumptions that we have determined to be reasonable and appropriate at June 30, 2007.

24. Receivables recorded in the financial statements represent valid claims against debtors for sales or other charges arising on or before the balance-sheet date and have been appropriately reduced to their estimated net realizable value.
25. Provision has been made to reduce excess or obsolete inventories to their estimated net realizable value. The unapplied overhead of \$30,637,000 included in inventory is recoverable from the sale of the 2007 crop. All inventories are the property of the Company and do not include any items consigned to it, any items billed to customers, or any items for which the liability has not been recorded.
26. We believe that all expenditures that have been deferred to future periods are recoverable.
27. We do not have (a) asserted and unsettled income tax contingencies, or (b) unasserted income tax contingencies caused by uncertain tax positions taken in our income tax returns filed with the Internal Revenue Service and state, local, and foreign tax authorities that are probable of assertion by such tax authorities under the provisions of FASB Statement No. 5, *Accounting for Contingencies*. Furthermore, we have not received either written or oral tax opinions that are contrary to our assessment.
28. We have no intention of terminating our 401(k) plan or taking any other action that could result in an effective termination or reportable event for the plan. We are not aware of any occurrences that could result in the termination of our 401(k) plan to which we contribute.
29. No provision is necessary for any loss to be sustained in the fulfillment of, or from inability to fulfill, any sales commitments at June 30, 2007. We also estimate no loss accrual is necessary for certain customers who are not expected to enforce the contractual quantity or who will allow fulfillment from future crop production. We believe the costs of the future crop production will not exceed the market value for these contracts.
30. No provision is necessary for any loss to be sustained as a result of purchase commitments for inventory quantities in excess of normal requirements or at prices in excess of the prevailing market prices.
31. Provision has been made for losses to be sustained in the fulfillment of, or from inability to fulfill, any commitments to purchase or sell securities under forward-placement, financial futures contracts, and standby commitments - none.

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32. We have fully disclosed to you all sales terms, including all rights of return or price adjustments and all warranty provisions.
33. All documentation related to sales transactions is contained in customer files. We also confirm that:
 - a. We are not aware of any "side agreements" with any companies that are inconsistent with the applicable sales agreement, the customer's purchase order, sales invoice, or any other documentation contained in the customer's file. For the purposes of this letter, a "side agreement" is any agreement, understanding, promise, or commitment [whether written (e.g., in the form of a letter or formal agreement or in the form of any exchange of physical or electronic communications) or oral] by or on behalf of the Company (or any subsidiary, director, employee, or agent of the Company) with a customer from whom revenue has been recognized that is not contained in the written purchase order from the customer or sales order confirmation and sales invoice of the Company delivered to or generated by the Company's Accounting and Finance Department. The definition of a side agreement is not limited by any particular subject matter. For purposes of example only, any agreement not contained in the written purchase order from the customer or sales order and sales invoice of the Company that relates to return rights, acceptance rights, future pricing, payment terms, free consulting, free maintenance, or exchange rights would be a side agreement.
 - b. We are not aware of any commitments or concessions to a customer regarding pricing or payment terms outside of the terms documented in the customer's file.
34. The Company has identified all intercompany inventories and such inventories have been properly eliminated for financial consolidation purposes.
35. The Company has identified all intercompany transactions and any profit or loss as a result of intercompany transactions has been eliminated for financial statement consolidation purposes.
36. The Company has contracts with certain customers which require delivery of a specified amount of product. Customers determine delivery schedules based on their needs. These sales are recognized when title and risk of loss transfer to the customer, even though delivery may not have occurred.
37. In September 2007, SK Aviation purchased a new plane for approximately \$15,000,000. SK Aviation financed \$12,500,000 of the purchase price with a note maturing in 2019. In May 2007, SK Aviation sold a plane for approximately \$11,500,000, at a gain of approximately \$2,700,000. The sale proceeds were used to payoff the plane's related debt and as a deposit on the new aircraft. The related guarantee by the Partnership was cancelled.
38. We have changed our fiscal year end to June 30 effective November 1, 2006.

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Other than those described above, as disclosed in Notes to the financial statements, to the best of our knowledge and belief, no events have occurred subsequent to the balance-sheet date and through the date of this letter that would require adjustment to or disclosure in the aforementioned financial statements.

Scott Salyer, Chief Executive Officer and President

Mark McCormick, Executive Vice President

Shondale Seymour, Interim Chief Financial Officer

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EXHIBIT 11

In The Matter Of:

CEDENCO JV AUSTRALIA PTY LTD

SCOTT DYE - Vol. I

August 16, 2011

MERRILL CORPORATION

LegalLink, Inc.

135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---o0o---

In re:)
) NO. 10-35002
CEDENCO JV AUSTRALIA PTY LTD, et)
al, (In Liquidation),) Chapter 15
)
Debtors in Foreign Proceedings.)
_____)

---o0o---

Fresno, California

August 16, 2011

The deposition of SCOTT DYE was taken in the above-entitled matter pursuant to all of the provisions of law pertaining to the taking and use of depositions before Amanda Scott, CSR, with offices at Fresno, California, commencing at the hour of 2:22 p.m. at the law offices of McCormick, Barstow, Sheppard, Wayte & Carruth, 5 River Park Place East, Fresno, California.

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<p>1 INDEX CONTINUED</p> <p>2</p> <p>3 EXHIBITS</p> <p>4 NO. DESCRIPTION PAGE</p> <p>5 70 December 18, 2007 Letter From Gary Perry 61</p> <p>6 71 January 14, 2008 Letter From Gary Perry 62</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 BY: SCOTT LEWIS</p> <p>2 FOR THE WITNESS:</p> <p>3 McCormick, Barstow, Sheppard, Wayte & Carruth</p> <p>4 Attorneys at Law</p> <p>5 5 River Park Place East</p> <p>6 Fresno, California 93720</p> <p>7 (559) 433-1300</p> <p>8 benjamin.nicholson@mccormickbarstow.com</p> <p>9 BY: BENJAMIN T. NICHOLSON</p> <p>10 Also Present: John Sheahan</p> <p>11 ---oOo---</p> <p>12 SCOTT DYE,</p> <p>13 called as a witness herein, having</p> <p>14 been heretofore duly sworn,</p> <p>15 testified as follows:</p> <p>16 ---oOo---</p> <p>17 (Exhibit 1 was marked for identification.)</p> <p>18 EXAMINATION BY MR. CHRISTMAS</p> <p>19 Q. Good morning, Mr. Dye. My name is</p> <p>14:22 20 Robert Christmas, I'm with Nixon Peabody. I'm counsel to</p> <p>14:22 21 Mr. Sheahan, who's sitting to my right, as well as</p> <p>14:22 22 Ian Lock, who's the other liquidator in these chapter 15</p> <p>14:22 23 bankruptcy proceedings.</p> <p>14:22 24 Just as a preliminary, have you ever been</p> <p>14:22 25 deposed before?</p> <p>14:22 A. Yes, I have.</p> <p>14:22 Q. So you understand the procedure, that we can't</p> <p>14:22 talk at the same time, court reporter can't take it down,</p>

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<p>14:22 1 two people talking at once. So if you would, for 14:22 2 example, wait until the end of my question, you may 14:22 3 anticipate what my question is, but it may not turn out 14:23 4 to be that way, so in order to keep the record clear if 14:23 5 you would let me finish my questions before you answer, 14:23 6 that will help. 14:23 7 Also, the court reporter can't take down nods, 14:23 8 so you have to answer "yes" or "no," answer verbally 14:23 9 rather than by gestures. 14:23 10 Also, are you taking any medication today that 14:23 11 would interfere with your ability to remember events? 14:23 12 A. No, I am not. 14:23 13 Q. Or tell events? 14:23 14 A. No. 14:23 15 Q. And do you suffer from any physical condition 14:23 16 that affects your memory? 14:23 17 A. No. 14:23 18 Q. Now, in front of you should be Exhibit 1. 14:23 19 MR. NICHOLSON: I'm sorry. Mr. Christmas, were 14:23 20 you handing this to me for us to share? 14:23 21 MR. CHRISTMAS: No, no. He has the original in 14:23 22 front of him. 14:23 23 BY MR. CHRISTMAS: 14:23 24 Q. At the top is the notice of deposition, which 14:23 25 you probably haven't seen before, with the second part of</p>	<p>14:25 1 Q. Were any of the documents that you produced, 14:25 2 other than e-mail, I'll get to e-mail in a second, were 14:25 3 retained in a non-hard-copy form? 14:25 4 A. Yes, they were. 14:25 5 Q. And how do they achieve that status? Do you 14:25 6 scan them? 14:25 7 A. I believe they were just produced within the 14:25 8 computer or transferred electronically in some fashion on 14:25 9 the drive that we provided you today. There are, I 14:25 10 believe, some Excel files. 14:25 11 Q. And so the people, the custodians of e-mails 14:26 12 who were searched were Ms. Garone and your e-mail inbox? 14:26 13 A. Correct. 14:26 14 Q. Anyone else's e-mail inbox? 14:26 15 A. She may have required Mr. Bristol, his e-mails, 14:26 16 to obtain additional e-mails from when she was first 14:26 17 asked to search the records. 14:26 18 Q. For the record, some documents were just 14:26 19 produced to us prior to the commencement of the 14:26 20 deposition. Can you tell me how those documents came to 14:26 21 light? 14:26 22 A. I was reviewing additional e-mails regarding 14:26 23 another matter and noticed one referencing a document, 14:26 24 and I went to the files and found that document. 14:26 25 Q. Which files are those?</p>
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<p>14:23 1 the exhibit as the subpoena. 14:23 2 Have you seen that document before? 14:24 3 A. Actually, I have seen the notice of deposition. 14:24 4 I don't recall seeing the subpoena specifically, no. I 14:24 5 think Mr. Nicholson has conveyed to me the requirements 14:24 6 of the subpoena. 14:24 7 Q. So you're aware that documents were required to 14:24 8 be produced pursuant to the subpoena? 14:24 9 A. I believe so, yes. 14:24 10 Q. And were you involved in the search for those 14:24 11 documents? 14:24 12 A. Yes, I was. 14:24 13 Q. And who else was involved? 14:24 14 A. Tracy Garone, our audit partner. 14:24 15 Q. And what types of locations of documents did 14:24 16 you search for responsive documents? 14:24 17 A. Ms. Garone searched through all the documents 14:24 18 she had in relationship to the audit that had been done 14:24 19 for SK Foods. She also searched through her entire 14:24 20 string of e-mails that she received through SK. In 14:24 21 addition, I have gone through e-mails and -- work-related 14:25 22 to agreed upon procedures. 14:25 23 Q. And the nature of the repository of the audit 14:25 24 file, how do you maintain that? 14:25 25 A. Most of that I think is still in hard copy.</p>	<p>14:26 1 A. Those are the electronic files. 14:26 2 Q. The electronic files, okay. So there's a hard 14:26 3 copy file and there's also a virtual file, if you will? 14:26 4 A. I believe most of the audit work papers are in 14:26 5 a hard copy file, and then there was other files for 14:27 6 other procedures that were to be worked on. 14:27 7 Q. Okay. And the other files are the ones that 14:27 8 are stored electronically? 14:27 9 A. Correct. 14:27 10 Q. Okay. If I could just ask you now a few 14:27 11 questions about your background. What post high school 14:27 12 degrees do you have? 14:27 13 A. I have a degree in business, emphasis on 14:27 14 accounting. 14:27 15 Q. And from what institution? 14:27 16 A. California State University of Chico. 14:27 17 Q. And what year were you awarded that degree? 14:27 18 A. I believe it was 1972. 14:27 19 Q. Do you have any professional licenses? 14:27 20 A. Yes, I'm a CPA. I'm also an ABV. 14:27 21 Q. Can you tell me what that is? 14:27 22 A. It's Accredited in Business Valuation. 14:28 23 And I'm a CFF. 14:28 24 Q. And what is that? 14:28 25 A. Certified Financial Forensic.</p>

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<p>14:28 1 Q. And does part of your practice include 14:28 2 valuation testimony as an expert witness? 14:28 3 A. Correct. 14:28 4 Q. And part of your practice involves forensic 14:28 5 investigation? 14:28 6 A. That's correct. 14:28 7 Q. How long have you been an expert witness in 14:28 8 valuation? 14:28 9 A. Since I didn't bring my resumé, it's about ten 14:28 10 years. 14:28 11 Q. And how long have you done forensic accounting? 14:28 12 A. I've worked in the forensic area for over 14:28 13 20 years. 14:28 14 Q. Okay. I'm sure you have a long and 14:28 15 distinguished career, so I don't want to go back over the 14:28 16 entire thing, but it would just be helpful to know, have 14:29 17 you been in practice as an accountant since graduation 14:29 18 from university? 14:29 19 A. As an accountant, correct. 14:29 20 Q. And how long have you been with Moss Adams -- 14:29 21 Stoughton Davidson? 14:29 22 A. 27 years. 14:29 23 Q. As part of your practice are you doing 14:29 24 exclusively valuation and forensic work, or are you still 14:29 25 doing any kind of audit services?</p>	<p>14:31 1 contacted by a fellow named Marshal Scott out at SK 14:31 2 Foods, who I think was acting as a consultant at the 14:31 3 time. Their audit was coming up. They were unsure as to 14:31 4 what Moss Adams was going to do and they needed somebody 14:31 5 to at least observe the inventory as of June 30. 14:31 6 Q. What does it mean to observe the inventory? 14:31 7 A. You go out and you effectively observe the 14:31 8 process that the company goes through in counting their 14:31 9 inventory to ensure that it is properly counted as to how 14:31 10 much inventory is on hand. 14:32 11 Q. So if I understand you correctly, you said it 14:32 12 was a step process, so the first part of the engagement 14:32 13 was observing the inventory? 14:32 14 A. That was the first inquiry. 14:32 15 Q. Okay. Your firm was asked to do that? 14:32 16 A. Correct. 14:32 17 Q. And then at some point in time did it then 14:32 18 expand to something else? 14:32 19 A. I subsequent to that went on vacation, and one 14:32 20 of my partners was contacted about doing the full audit 14:32 21 of the financial statements. 14:32 22 Q. Which partner was that? 14:32 23 A. I'm not sure if it was Tom McFerson or 14:32 24 Scott Bristol. It was either one of those two. 14:32 25 Q. And did your firm accept that engagement?</p>
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<p>14:29 1 A. I have audit clients as well as tax clients 14:29 2 also. 14:29 3 Q. Oh, you do. 14:29 4 When did you first learn of SK Foods LP and the 14:29 5 related entities associated with the Salyer family? 14:30 6 A. I can't tell you exactly when the knowledge and 14:30 7 if I have a full knowledge of all the related entities 14:30 8 with the Salyer, because we didn't do all the work for 14:30 9 all the Salyer entities. 14:30 10 We first learned of them probably in about 2005 14:30 11 or '6, and we did an audit of their pension plan. 14:30 12 Q. Was that an annual engagement, you did a 14:30 13 pension plan every year? 14:30 14 A. Yes, it became one. 14:30 15 Q. And I take it at some point the engagement 14:30 16 expanded to reviewing the performing financial statement 14:30 17 services related to financial statements? 14:30 18 A. That would be correct. 14:30 19 Q. Okay. And what year was the engagement 14:30 20 expanded to include that? 14:30 21 A. That would have been for the year ending 14:31 22 June 30th, 2008. 14:31 23 Q. And do you recall who at Stoughton Davidson was 14:31 24 approached to ask if you could perform those services? 14:31 25 A. It was a step process, and I was initially</p>	<p>14:32 1 A. Ultimately, yes. 14:32 2 Q. And do you have any understanding as to why 14:32 3 your firm was asked to do that instead of Moss Adams? 14:33 4 MR. NICHOLSON: Objection. Calls for 14:33 5 speculation. 14:33 6 MR. CHRISTMAS: Just asking for your 14:33 7 understanding. 14:33 8 THE WITNESS: Well, I can tell you why we were 14:33 9 called, because we had previously had employees that had 14:33 10 worked with us that were currently working at SK Foods. 14:33 11 Why they chose us over Moss Adams for that period, I 14:33 12 would be speculating on. 14:33 13 BY MR. CHRISTMAS: 14:33 14 Q. And one of those individuals was 14:33 15 Mark McCormick. Is that correct? 14:33 16 A. That would be correct. 14:33 17 Q. And he previously worked with you? 14:33 18 A. That's correct. 14:33 19 Q. I believe in various places there's a statement 14:33 20 or something is emblazoned in some of the documents that 14:33 21 I've seen that refers to something called the "Moss Adams 14:33 22 connection," or I don't know what it is, "consortium." 14:34 23 Can you tell me what that is? 14:34 24 A. It was an association -- 14:34 25 MR. NICHOLSON: Objection. Vague and</p>

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<p>14:34 1 ambiguous.</p> <p>14:34 2 BY MR. CHRISTMAS:</p> <p>14:34 3 Q. If you understand the question, you can answer.</p> <p>14:34 4 A. It was an association of CPA firms that met</p> <p>14:34 5 with Moss Adams on an annual basis where there was</p> <p>14:34 6 additional continuing education, discussion about</p> <p>14:34 7 services that could be either shared or provided by one</p> <p>14:34 8 firm or the other, and it included firms in California,</p> <p>14:34 9 Washington, Oregon, Idaho, and several other states, I</p> <p>14:34 10 believe.</p> <p>14:34 11 Q. So this doesn't involve interlocking governance</p> <p>14:34 12 between firms in any way?</p> <p>14:34 13 A. No.</p> <p>14:34 14 Q. And doesn't involve interlocking ownership?</p> <p>14:34 15 A. No.</p> <p>14:34 16 Q. When your firm accepted the engagement, did you</p> <p>14:35 17 then have any face-to-face meetings with members of</p> <p>14:35 18 management of SK Foods?</p> <p>14:35 19 A. Well, there are a number of meetings with</p> <p>14:35 20 members of management.</p> <p>14:35 21 MR. NICHOLSON: I'm not sure if you're</p> <p>14:35 22 referring, when you say "you," if you're referring to</p> <p>14:35 23 Scott or you're referring to the company.</p> <p>14:35 24 BY MR. CHRISTMAS:</p> <p>14:35 25 Q. Well, after your firm accepted the engagement,</p>	<p>14:36 1 after you returned from vacation attend any in-person</p> <p>14:36 2 meetings at SK Foods, or with SK Foods management?</p> <p>14:36 3 A. Again, could we talk about the time frame here?</p> <p>14:36 4 Q. Well, when did your vacation end?</p> <p>14:36 5 A. Probably early July, 2008.</p> <p>14:36 6 Q. Okay. After you returned to the office were</p> <p>14:37 7 there any meetings right after you returned to the</p> <p>14:37 8 office?</p> <p>14:37 9 A. None that I recall that I was involved with.</p> <p>14:37 10 Q. Did you have any meetings with Moss Adams at or</p> <p>14:37 11 about that time?</p> <p>14:37 12 A. I did not.</p> <p>14:37 13 Q. Did any of your colleagues have any meetings</p> <p>14:37 14 with Moss Adams at or about that time?</p> <p>14:37 15 A. Yes.</p> <p>14:37 16 Q. And who had those meetings?</p> <p>14:37 17 A. Ms. Garone.</p> <p>14:37 18 Q. Do you know if she took any notes of those</p> <p>14:37 19 meetings?</p> <p>14:37 20 A. I believe some of them are even included in</p> <p>14:37 21 here, but yes, she would have taken notes because she was</p> <p>14:37 22 reviewing the prior work papers of Moss Adams, which is a</p> <p>14:37 23 standard procedure when performing an audit.</p> <p>14:37 24 Q. Do you know if her notes identify any</p> <p>14:37 25 particular controversial issues in the prior engagement?</p>
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<p>14:35 1 did you personally meet with members of SK Foods</p> <p>14:35 2 management?</p> <p>14:35 3 A. Do we have some sort of time frame here?</p> <p>14:35 4 Q. Well, you accepted the engagement in when,</p> <p>14:35 5 approximately?</p> <p>14:35 6 A. Well, when I was on vacation. So right after</p> <p>14:35 7 acceptance, no, I did not meet immediately with them.</p> <p>14:35 8 Q. Do you know if any of your colleagues did?</p> <p>14:35 9 A. Oh, I'm certain they did, yes.</p> <p>14:35 10 Q. Why are you certain that they did?</p> <p>14:35 11 A. Because they had to to arrange the engagement,</p> <p>14:35 12 to plan the engagement and to finalize the engagement</p> <p>14:36 13 letter.</p> <p>14:36 14 Q. Okay. And did they tell you what was said at</p> <p>14:36 15 those meetings in any fashion?</p> <p>14:36 16 A. No, nothing other than the general discussions</p> <p>14:36 17 that we're going to do an audit investigation.</p> <p>14:36 18 Q. Did they identify any particular issues? Did</p> <p>14:36 19 your colleagues inform you of any particular issues that</p> <p>14:36 20 were important or sensitive?</p> <p>14:36 21 MR. NICHOLSON: Objection. Vague and</p> <p>14:36 22 ambiguous.</p> <p>14:36 23 THE WITNESS: At what time?</p> <p>14:36 24 BY MR. CHRISTMAS:</p> <p>14:36 25 Q. Well, let's go to the -- did you at any point</p>	<p>14:38 1 MR. NICHOLSON: Objection. Vague and</p> <p>14:38 2 ambiguous.</p> <p>14:38 3 MS. WOODRUFF: Objection. Vague and ambiguous</p> <p>14:38 4 THE WITNESS: And off the top of my head, I</p> <p>14:38 5 don't know.</p> <p>14:38 6 BY MR. CHRISTMAS:</p> <p>14:38 7 Q. So who were the lead people on this engagement</p> <p>14:38 8 at this point? Did you step in to lead the engagement,</p> <p>14:38 9 or were other of your colleagues leading the engagement?</p> <p>14:38 10 A. No, the engagement was handled by Ms. Garone,</p> <p>14:38 11 the audit partner.</p> <p>14:38 12 Q. So after you returned from vacation, what was</p> <p>14:38 13 your next involvement, your personal involvement in the</p> <p>14:38 14 engagement?</p> <p>14:38 15 A. I did not get involved with SK Foods until</p> <p>14:38 16 subsequent to the audit.</p> <p>14:38 17 Q. What was your involvement, what was your first</p> <p>14:39 18 then involvement after the audit?</p> <p>14:39 19 A. There was some agreed-upon procedures relating</p> <p>14:39 20 to inventory.</p> <p>14:39 21 Q. We'll get back to that.</p> <p>14:39 22 Were you involved in reviewing any of the</p> <p>14:39 23 documents relating to the audit?</p> <p>14:39 24 A. Prior to issuance of the report?</p> <p>14:39 25 Q. Yes.</p>

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14:39	1	A. No.	14:43	1	Q. And how did you come to know of them?
14:39	2	Q. And can you tell me what your involvement was	14:43	2	A. Only in passing and getting ready for this
14:39	3	with the agreed-upon procedures?	14:43	3	deposition.
14:39	4	A. Subsequent to the audit there became some	14:43	4	Q. Are you aware of any transfers of ownership
14:39	5	issues revolving around an account called Unapplied	14:43	5	interest of those entities that occurred prior to your
14:39	6	Overhead. It was questioned and I believe November to	14:43	6	firm's engagement for the audit?
14:40	7	December of that year by some other consultants in there	14:43	7	A. Yes, I am.
14:40	8	that the account seemed to be extremely large, and at	14:43	8	Q. Okay. And what did you learn of and when?
14:40	9	that time we got involved to do further investigation	14:43	9	A. In reviewing the footnotes in the Moss Adams
14:40	10	into that account.	14:43	10	financial statements for, I believe, June 30, 2007, they
14:40	11	Q. And that was part of the scope of the	14:43	11	disclose the transfer to the partners. And further
14:40	12	agreed-upon procedures?	14:43	12	review in these documents indicates the underlying
14:40	13	A. That's correct.	14:43	13	journal entries indicating that transfer.
14:40	14	Q. Okay. And who led the engagement for the	14:44	14	Q. Okay. And when you say "that transfer," you
14:40	15	agreed-upon procedures?	14:44	15	mean the ownership transfer?
14:40	16	A. Mr. Bristol and myself.	14:44	16	A. That's correct, the investment that SK had was
14:40	17	Q. And is there a reason that you were the lead of	14:44	17	transferred out to the partners.
14:40	18	that engagement but didn't lead the audit?	14:44	18	Q. Okay. Are you aware of an accompanying issue
14:40	19	A. Well, the agreed-upon procedures was not a	14:44	19	with respect to transfer of debt? I won't say "issue," I
14:40	20	specific audit-type, nor was it a forensic-type, so it	14:44	20	want to say a transfer or change in the identity of the
14:40	21	was a special project, and I was available to assist with	14:44	21	payer of debt?
14:40	22	that special project.	14:44	22	MS. WOODRUFF: Objection. Vague and ambiguous
14:41	23	MR. NICHOLSON: I'm sorry. Can we stop for a	14:44	23	THE WITNESS: Well, I think I need some
14:41	24	second.	14:44	24	clarification in terms of payor and payee. If you'd like
14:41	25	MR. CHRISTMAS: Yes.	14:44	25	to be clear about who we're asking about, I'd gladly
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14:41	1	MR. NICHOLSON: I apologize. I didn't have the	14:44	1	answer the question.
14:41	2	last number, so I just had them Bates-stamp them SD and	14:44	2	BY MR. CHRISTMAS:
14:41	3	started at number 1 again. Documents have already been	14:44	3	Q. Are you aware that a trust was substituted for
14:41	4	provided, but hopefully it will make sense.	14:44	4	the offshore entities on some intercompany debt as the
14:41	5	MR. CHRISTMAS: You can give me the extra sets.	14:44	5	payor?
14:41	6	I'll hold one for Scott here.	14:44	6	MS. WOODRUFF: Objection. Assumes facts not in
14:41	7	BY MR. CHRISTMAS:	14:44	7	evidence.
14:42	8	Q. Can you give me a time frame of the agreed-upon	14:44	8	BY MR. CHRISTMAS:
14:42	9	procedures, how long that engagement took?	14:44	9	Q. You can answer.
14:42	10	A. Well, that engagement, when you use the term	14:44	10	A. Let me tell you what I'm aware of in that
14:42	11	"took" indicates that it was completed, and it never was	14:44	11	situation to clarify so we're not dealing with words,
14:42	12	completed.	14:45	12	because when I hear offshore entities I think of tax
14:42	13	Q. Thank you for the correction.	14:45	13	havens and stuff, as opposed to New Zealand and
14:42	14	What was the reason it was not completed?	14:45	14	Australia --
14:42	15	A. Within our engagement letter there's a clause	14:45	15	Q. That's what I meant, that's what I was
14:42	16	about continuing work when you're not being paid, and we	14:45	16	referring to, it was.
14:42	17	hadn't been paid so we withdrew from the engagement until	14:45	17	A. -- who I assume you're referring to.
14:42	18	payment would be made. Subsequently they filed	14:45	18	I'm aware that on the books of SK Foods LP
14:42	19	bankruptcy and we never did any further work.	14:45	19	there were a number of accounts receivable and payables
14:42	20	Q. So in terms of audit work, there was only one	14:45	20	to certain affiliates in either Australia or in New
14:42	21	audit?	14:45	21	Zealand. Those accounts were, in fact, combined, and the
14:42	22	A. Of SK, correct.	14:45	22	footnote indicates sold to the revocable trust.
14:42	23	Q. Are you familiar with the affiliates of SK	14:45	23	Q. And what revocable trust, to your knowledge,
14:43	24	Foods that exist in Australia and New Zealand?	14:45	24	are you referring to?
14:43	25	A. I know of them.	14:45	25	A. The one that's the partner in SK Foods LP.

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<p>14:45 1 Q. And do you know the name of that trust?</p> <p>14:45 2 A. I've seen it referred several places. It was</p> <p>14:45 3 Scott Salyer's revocable trust of some sort.</p> <p>14:46 4 Q. Did you have occasion to review any of the</p> <p>14:46 5 underlying transaction documents that affected the change</p> <p>14:46 6 of the owner, of the alleged change in owner of the</p> <p>14:46 7 Australian and New Zealand companies?</p> <p>14:46 8 A. Are you referring to the legal documents that</p> <p>14:46 9 would have been drawn back in 2006 or '7 when this</p> <p>14:46 10 occurred?</p> <p>14:46 11 Q. That's correct.</p> <p>14:46 12 A. No, I have not.</p> <p>14:46 13 Q. And similarly, the transaction that involved</p> <p>14:46 14 the intercompany debt with respects to the irrevocable</p> <p>14:46 15 trust that you're talking about, did you see any of the</p> <p>14:46 16 legal documents?</p> <p>14:46 17 A. Not that I recall.</p> <p>14:46 18 Q. Do you know if anyone else at Stoughton</p> <p>14:46 19 Davidson saw the legal documents for the equity or the</p> <p>14:46 20 debt transaction?</p> <p>14:46 21 A. I don't know the answer to that question.</p> <p>14:46 22 Q. In preparing for this deposition did you come</p> <p>14:47 23 across any legal documents relating to either the debt or</p> <p>14:47 24 the equity that were in the file at the time of the audit</p> <p>14:47 25 engagement?</p>	<p>14:48 1 called the SSC&L 2007 trust, as opposed to the</p> <p>14:48 2 Scott Salyer irrevocable trust?</p> <p>14:48 3 A. I've seen the SSCL letters, but I'm not</p> <p>14:48 4 familiar with that trust at all.</p> <p>14:48 5 Q. So it's your understanding that the</p> <p>14:48 6 Scott Salyer revocable trust is involved in the</p> <p>14:48 7 intercompany debt?</p> <p>14:49 8 MS. WOODRUFF: Objection. Misstates the</p> <p>14:49 9 evidence.</p> <p>14:49 10 MR. CHRISTMAS: I'm asking for his</p> <p>14:49 11 understanding, not what the evidence is.</p> <p>14:49 12 MS. WOODRUFF: Well. Objection, then,</p> <p>14:49 13 misstates the witness's prior testimony.</p> <p>14:49 14 THE WITNESS: It's my understanding that</p> <p>14:49 15 whichever trust was the partner in SK Foods LP was the</p> <p>14:49 16 one that was involved in this transaction.</p> <p>14:49 17 BY MR. CHRISTMAS:</p> <p>14:49 18 Q. To your knowledge, did anyone at Stoughton</p> <p>14:49 19 Davidson ever have occasion to communicate with any</p> <p>14:49 20 members of management of the Australian or New Zealand</p> <p>14:49 21 companies?</p> <p>14:49 22 A. I don't know.</p> <p>14:49 23 Q. Have you ever had any occasion to communicate</p> <p>14:49 24 with management of the Australian or New Zealand</p> <p>14:49 25 companies?</p>
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<p>14:47 1 MR. NICHOLSON: Objection. Vague and</p> <p>14:47 2 ambiguous.</p> <p>14:47 3 THE WITNESS: The only documents, to clarify,</p> <p>14:47 4 that I've come across are those which were produced in</p> <p>14:47 5 the original packet, and these are here. So if there's</p> <p>14:47 6 something in there that you're referring to as a legal</p> <p>14:47 7 document, then yes, I've seen it.</p> <p>14:47 8 MR. NICHOLSON: Just to be clear, he's</p> <p>14:47 9 referring to the original production, and the</p> <p>14:47 10 supplemental production, and now the supplemental</p> <p>14:47 11 supplemental production.</p> <p>14:47 12 BY MR. CHRISTMAS:</p> <p>14:47 13 Q. Did you have any reason to question that the</p> <p>14:47 14 transfer of ownership that was mentioned in the footnote</p> <p>14:47 15 you just discussed was not made?</p> <p>14:48 16 A. It was disclosed on the financial statements</p> <p>14:48 17 that were audited by Moss Adams, so the answer would be</p> <p>14:48 18 no.</p> <p>14:48 19 Q. So you believe they were made?</p> <p>14:48 20 A. As far as I was aware, yes.</p> <p>14:48 21 Q. And the interposition of the irrevocable trust</p> <p>14:48 22 and the intercompany debt structure, did you have any</p> <p>14:48 23 reason to doubt that that had been effected?</p> <p>14:48 24 A. No.</p> <p>14:48 25 Q. Okay. Are you familiar with another trust</p>	<p>14:49 1 A. I'm trying to recall. I may have been in a</p> <p>14:50 2 room where there was a conference call, and I don't know</p> <p>14:50 3 if the individual was even in management, but it had to</p> <p>14:50 4 do with the projections and their format.</p> <p>14:50 5 Q. I'll ask you the same question with respect to</p> <p>14:50 6 the -- rephrase that.</p> <p>14:50 7 Are you aware as to whether the Australian and</p> <p>14:50 8 New Zealand companies have their own outside auditors?</p> <p>14:50 9 A. I have no idea who audited those companies.</p> <p>14:50 10 Q. So if you don't know who audited them, I would</p> <p>14:50 11 assume, then, you have never had any communications with</p> <p>14:50 12 them whose names you don't know?</p> <p>14:50 13 A. That would be correct.</p> <p>14:50 14 Q. Can you describe for me the extent to which</p> <p>14:50 15 your firm received documents from Moss Adams in order to</p> <p>14:51 16 perform the audit?</p> <p>14:51 17 A. In performing the audit Ms. Garone went to the</p> <p>14:51 18 Moss Adams office, reviewed their work papers and would</p> <p>14:51 19 have requested any documents or work papers that she</p> <p>14:51 20 would feel necessary to complete the audit.</p> <p>14:51 21 Q. Okay. And if she took copies of those, they</p> <p>14:51 22 would be in your document production?</p> <p>14:51 23 A. Not necessarily.</p> <p>14:51 24 Q. Do you know, if she took copies, where ones</p> <p>14:51 25 that aren't in there would have gone?</p>

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<p>14:51 1 A. It would be in her audit file.</p> <p>14:51 2 Q. So does the production not encompass the</p> <p>14:51 3 entirety of the audit file, or just a selection of</p> <p>14:51 4 documents?</p> <p>14:51 5 A. That's correct. The production includes those</p> <p>14:51 6 documents related to anything that she had identified</p> <p>14:51 7 that had something to do that she had either copied,</p> <p>14:51 8 received in an e-mail, relating to the foreign operations</p> <p>14:52 9 and these affiliates or subsidiaries as they were at one</p> <p>14:52 10 time.</p> <p>14:52 11 Q. With respect to what we referred to as the</p> <p>14:52 12 equity transfer, have you ever had any conversations with</p> <p>14:52 13 anybody about that transfer?</p> <p>14:52 14 MR. NICHOLSON: Objection. Vague and</p> <p>14:52 15 ambiguous.</p> <p>14:52 16 THE WITNESS: Only in general and getting ready</p> <p>14:52 17 for this with, like, Ms. Garone and reviewing these</p> <p>14:52 18 documents.</p> <p>14:52 19 BY MR. CHRISTMAS:</p> <p>14:52 20 Q. And I'm specifically referring to the transfer</p> <p>14:52 21 of ownership of the Australian, New Zealand companies,</p> <p>14:52 22 for the record.</p> <p>14:52 23 Do you know if Ms. Garone ever had any</p> <p>14:52 24 conversations with anyone with regard to the sale of the</p> <p>14:52 25 transfer of --</p>	<p>14:54 1 BY MR. CHRISTMAS:</p> <p>14:54 2 Q. Mr. Dye, I've handed you a document that has</p> <p>14:54 3 been numbered for identification as Exhibit 38 to your</p> <p>14:54 4 deposition. Do you recognize this document?</p> <p>14:54 5 A. I can tell you what it is, however I have never</p> <p>14:55 6 seen it before.</p> <p>14:55 7 Q. Tell me what it is.</p> <p>14:55 8 A. It's a work paper from the audit file.</p> <p>14:55 9 Q. So this is a work paper from the Stoughton</p> <p>14:55 10 Davidson audit file, not the Moss Adams audit file?</p> <p>14:55 11 A. That would be correct.</p> <p>14:55 12 Q. Is this a printout of an Excel spreadsheet, or</p> <p>14:55 13 what created the formatting of the document?</p> <p>14:55 14 A. It's a software program that is Excel-based</p> <p>14:55 15 that is used for the audits.</p> <p>14:55 16 Q. Could you take a look at this document and tell</p> <p>14:55 17 me what it memorializes.</p> <p>14:55 18 A. I can tell you what I believe it memorializes</p> <p>14:55 19 on here.</p> <p>14:55 20 Q. Okay.</p> <p>14:55 21 A. I believe this memorializes the balance that</p> <p>14:56 22 remains as of 6/30/07 for the investment in SK Foods</p> <p>14:56 23 Australia representing the balance of the notes that were</p> <p>14:56 24 due, and this number has been moved to a different</p> <p>14:56 25 account in June 30, 2008, although it hasn't changed in</p>
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<p>14:52 1 A. I do not --</p> <p>14:52 2 Q. Let me finish.</p> <p>14:52 3 -- the transfer of ownership of the Australian</p> <p>14:52 4 and New Zealand companies?</p> <p>14:52 5 A. No, I don't.</p> <p>14:52 6 Q. Are you aware of anyone ever questioning</p> <p>14:53 7 whether or not the transfer of the debt and transfer of</p> <p>14:53 8 equity had actually been effected?</p> <p>14:53 9 A. No.</p> <p>14:53 10 MR. NICHOLSON: Objection. Vague and</p> <p>14:53 11 ambiguous.</p> <p>14:53 12 MS. WOODRUFF: Vague as to time.</p> <p>14:53 13 BY MR. CHRISTMAS:</p> <p>14:53 14 Q. I'm sorry, everyone was talking at once. Did</p> <p>14:53 15 you have an answer?</p> <p>14:53 16 A. I gave an answer. It was "no."</p> <p>14:53 17 MR. CHRISTMAS: I apologize, I couldn't hear.</p> <p>14:54 18 We're doing somewhat unconventional numbering,</p> <p>14:54 19 so this is Exhibit 38. I'll pass -- how do you do this.</p> <p>14:54 20 MS. WOODRUFF: Why don't you pass two to</p> <p>14:54 21 Mr. Nicholson and two to you.</p> <p>14:54 22 MR. NUTI: 38, you said?</p> <p>14:54 23 MR. CHRISTMAS: Yes.</p> <p>14:54 24 (Exhibit 38 was marked for identification.)</p> <p>14:54 25 ///</p>	<p>14:56 1 balance.</p> <p>14:56 2 MR. CHRISTMAS: Can we just take a break for a</p> <p>14:56 3 minute.</p> <p>15:03 4 (Discussion off the record.)</p> <p>15:03 5 MR. CHRISTMAS: We're back on the record.</p> <p>15:03 6 Mr. Nuti is going to clarify something that I was unaware</p> <p>15:03 7 of in the document production.</p> <p>15:03 8 MR. NUTI: We have noticed that we have two</p> <p>15:03 9 sets of documents Bates-stamped SD and then a six-digit</p> <p>15:03 10 number. The trustee, sometime in March, produced its</p> <p>15:03 11 audit files related to the Stoughton Davidson audit.</p> <p>15:03 12 Those documents are Bates-stamped SD with a space, and</p> <p>15:03 13 then a six-digit number.</p> <p>15:04 14 Subsequent to that production, Stoughton</p> <p>15:04 15 Davidson produced to the liquidator its files associated</p> <p>15:04 16 with its audit, the same audit of SK Foods. Those are</p> <p>15:04 17 designated SD, six-digit number, no space.</p> <p>15:04 18 THE WITNESS: If I may speak, that's incorrect.</p> <p>15:04 19 MR. NICHOLSON: Can we go off the record again</p> <p>15:04 20 Do you want to talk to me?</p> <p>15:04 21 (Discussion off the record.)</p> <p>15:04 22 MR. NUTI: For clarification, the documents</p> <p>15:04 23 produced by Stoughton Davidson are responsive to the</p> <p>15:04 24 subpoena.</p> <p>15:04 25 Is that correct?</p>

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15:04	1 THE WITNESS: That would be correct.	15:09	1 A. That would be correct.
15:04	2 BY MR. CHRISTMAS:	15:09	2 Q. Unless you specify Moss Adams or something
15:04	3 Q. Could you turn back to the subpoena, to page 6.	15:09	3 else?
15:05	4 Now, Mr. Dye, you understand that you are here	15:09	4 A. Correct.
15:05	5 as a designated witness under rule 30(b)(6), or is that	15:09	5 Q. That would help.
15:05	6 your understanding?	15:09	6 What's the purpose of this document?
15:05	7 A. That's correct.	15:09	7 A. It's used to summarize accounts and group them
15:05	8 Q. Before you came here today, did you have	15:10	8 to take them forward to the balance sheet and income
15:05	9 occasion to review the matters for examination that are	15:10	9 statements for the audit.
15:05	10 listed there?	15:10	10 Q. And do you recognize the handwriting on this
15:05	11 A. I have not seen this before.	15:10	11 document?
15:05	12 Q. So you've never seen the listing of matters for	15:10	12 A. It appears to be Ms. Garone's, but I could be
15:05	13 examination in the subpoena?	15:10	13 incorrect.
15:05	14 A. I don't believe so.	15:10	14 Q. And do you know what -- there are a number of
15:05	15 Q. Did you discuss your appearance today with	15:10	15 instances of handwriting here that are followed by a
15:05	16 anybody?	15:10	16 check mark, and there appears to be a legend at the
15:05	17 A. Mr. Nicholson.	15:10	17 bottom that says "Agrees to audited consolidating
15:05	18 Q. Anybody else?	15:10	18 financial statements," and I can't read the rest of it,
15:05	19 A. People in our office.	15:10	19 or I don't understand the rest of it. "W/o/e."
15:05	20 Q. In that discussion, or in any other way, did	15:10	20 MR. NICHOLSON: I'm sorry. Where is the legend
15:06	21 you gain any understanding of what a rule 30(b)(6)	15:10	21 you're reading from?
15:06	22 witness is supposed to do?	15:10	22 MR. CHRISTMAS: At the bottom on the first
15:06	23 A. There was no discussion about that, no.	15:11	23 page.
15:06	24 Q. Do you know what rule 30(b)(6) is?	15:11	24 BY MR. CHRISTMAS:
15:06	25 A. No.	15:11	25 Q. Can you tell me what the check mark and the
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15:06	1 Q. So I would take it from your answer that you do	15:11	1 legend at the bottom means?
15:06	2 not know what a rule 30(b)(6) witness is?	15:11	2 A. The "W/o/e" means "without exception." The
15:06	3 A. That would be correct.	15:11	3 check marks indicate that they have gone to the financial
15:06	4 MR. NICHOLSON: You might ask him about being a	15:11	4 statements as drafted and agree that these totals were
15:06	5 person most knowledgeable. I'm not sure if he would	15:11	5 the same as were on the financial statements.
15:06	6 understand.	15:11	6 Q. So the reference here would be to the prior
15:06	7 MR. CHRISTMAS: Let's go off the record.	15:11	7 years' financial statements or to the ones that are being
15:07	8 (Discussion off the record.)	15:11	8 generated in this process?
15:07	9 (Exhibit 39 was marked for identification.)	15:11	9 A. No, 6/30/2008.
15:07	10 BY MR. CHRISTMAS:	15:11	10 Q. So this is generated as part of the ongoing
15:08	11 Q. Mr. Dye, the court reporter has handed you a	15:11	11 audit as opposed to looking to see whether or not these
15:08	12 document marked for identification as Stoughton Davidson	15:11	12 numbers agree to the prior audit?
15:08	13 39 -- well, off the record.	15:11	13 A. That's correct.
15:08	14 (Discussion off the record.)	15:11	14 Q. I apologize if I asked you this before. Did
15:08	15 BY MR. CHRISTMAS:	15:12	15 you say you had or had not seen this document before?
15:08	16 Q. This is, we'll call it Stoughton Davidson 39.	15:12	16 A. I don't recall seeing this document.
15:08	17 Do you know what this document is, Mr. Dye?	15:12	17 Q. I believe it was your testimony that you didn't
15:09	18 A. Appears to be the trial balance, grouped, of SK	15:12	18 lead the audit for 2008. Did you have any participation
15:09	19 Foods LP for June 30th, 2008.	15:12	19 in the audit services rendered?
15:09	20 Q. And is this a document generated by SK Foods?	15:12	20 A. Only subsequent to the audit when it became a
15:09	21 A. No, this appears to be a document that would	15:12	21 question as to whether the one account was accurate or
15:09	22 have been generated by a program known as Engagement,	15:13	22 not.
15:09	23 used during the audit.	15:13	23 Q. And what one account was that?
15:09	24 Q. And should I assume when you say "the audit,"	15:13	24 A. The unapplied overhead.
15:09	25 that would be the audit performed by Stoughton Davidson?	15:13	25 Q. Okay. And is that separate from the

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<p>15:13 1 agreed-upon procedures, or --</p> <p>15:13 2 A. The agreed-upon procedures were steps agreed</p> <p>15:13 3 upon with SK Foods that we would perform to determine the</p> <p>15:13 4 accuracy of that account as one of the steps. There are</p> <p>15:13 5 also a number of other steps to look at their inventory</p> <p>15:13 6 procedures.</p> <p>15:13 7 Q. And if I understand the chronology, the</p> <p>15:13 8 agreed-upon procedures were after the audit was</p> <p>15:13 9 concluded?</p> <p>15:13 10 A. Correct.</p> <p>15:13 11 Q. But your answer implies that -- well, I'm not</p> <p>15:13 12 clear on your answer. If the audit was concluded, how</p> <p>15:13 13 was it that you were doing work on the audit? Did there</p> <p>15:13 14 need to be a correction? I'm not following your answer.</p> <p>15:13 15 A. The audit was withdrawn due to -- I had</p> <p>15:14 16 explained earlier that some consultants that they had</p> <p>15:14 17 hired thought that the unapplied overhead was extremely</p> <p>15:14 18 high, in the latter part in October and November, and at</p> <p>15:14 19 that point everybody got concerned that maybe the account</p> <p>15:14 20 was incorrect, and so the procedure was to withdraw the</p> <p>15:14 21 audit and to go back and attempt to determine the</p> <p>15:14 22 validity of that account.</p> <p>15:14 23 Q. But prior to that issue coming to light, did</p> <p>15:14 24 you participate in the generation of the original audit</p> <p>15:14 25 issued by your firm?</p>	<p>15:16 1 Do you recognize this document?</p> <p>15:16 2 A. It appears to be an analysis of the</p> <p>15:16 3 intercompany receivables for SK Foods as of June 30th,</p> <p>15:16 4 2008.</p> <p>15:16 5 Q. And do you know, is this a Stoughton Davidson</p> <p>15:17 6 generated document, or by someone else?</p> <p>15:17 7 A. I don't know. It appears to have been</p> <p>15:17 8 generated by the client. There is a notation up in the</p> <p>15:17 9 upper-right corner that says PBC, that stands for</p> <p>15:17 10 "prepared by client."</p> <p>15:17 11 Q. The handwriting on here, do you recognize any</p> <p>15:17 12 of that?</p> <p>15:17 13 A. Well, based on the initials of the people</p> <p>15:17 14 signing off, it appears to be more than one person.</p> <p>15:17 15 Q. Do you recognize the persons who wrote on this</p> <p>15:17 16 document, their handwriting?</p> <p>15:17 17 A. I recognize initials as being Ms. Garone's and</p> <p>15:17 18 Ms. Tozlian's.</p> <p>15:18 19 Q. I'm sorry?</p> <p>15:18 20 A. Tozlian.</p> <p>15:18 21 Q. Who is that person?</p> <p>15:18 22 A. She's an audit manager.</p> <p>15:18 23 Q. What is her first name?</p> <p>15:18 24 A. Jennifer.</p> <p>15:18 25 Q. Do you know the purpose of this marked-up</p>
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<p>15:14 1 A. No.</p> <p>15:14 2 Q. And just to carry on with your second-to-last</p> <p>15:14 3 answer, what's the mechanics of withdrawing the audit?</p> <p>15:14 4 Did you send a letter to SK Foods? How did that come</p> <p>15:15 5 about?</p> <p>15:15 6 A. There were discussions, there were e-mails, so</p> <p>15:15 7 they could alert the potential users of those financial</p> <p>15:15 8 statements that they should return those and not rely on</p> <p>15:15 9 those.</p> <p>15:15 10 Q. Okay. And was there an amended set of</p> <p>15:15 11 financial statements issued after doing the agreed-upon</p> <p>15:15 12 procedures?</p> <p>15:15 13 A. As stated earlier, the agreed-upon procedures</p> <p>15:15 14 were never completed. The answer to your question</p> <p>15:15 15 regarding was there subsequent financial issued, is "no."</p> <p>15:15 16 Q. So from Stoughton Davidson's perspective, the</p> <p>15:15 17 financial statements were withdrawn and there was no</p> <p>15:15 18 subsequent set of financial statements issued to anybody?</p> <p>15:15 19 A. That's correct.</p> <p>15:15 20 MR. CHRISTMAS: Let's do 41.</p> <p>15:16 21 (Exhibit 41 was marked for identification.)</p> <p>15:16 22 BY MR. CHRISTMAS:</p> <p>15:16 23 Q. Mr. Dye, I've had the court reporter hand you</p> <p>15:16 24 Stoughton Davidson 41 for identification for your</p> <p>15:16 25 deposition.</p>	<p>15:18 1 document?</p> <p>15:18 2 A. It was used to analyze the intercompany</p> <p>15:18 3 receivables for the audit.</p> <p>15:18 4 Q. And do you know what the source of the numbers</p> <p>15:18 5 on the document is?</p> <p>15:18 6 A. They came from the client. This document is</p> <p>15:18 7 prepared by the client.</p> <p>15:18 8 Q. And there are several legends at the bottom.</p> <p>15:18 9 If I could ask you to walk through them with me, there's</p> <p>15:18 10 a check mark legend on the far left, and can you tell me</p> <p>15:18 11 what that legend indicates?</p> <p>15:19 12 A. It indicates that those check marks next to</p> <p>15:19 13 certain numbers in the columns up above were agreed</p> <p>15:19 14 directly to notes receivable, related party receivables,</p> <p>15:19 15 notes payable and other payables without exception.</p> <p>15:19 16 Q. So what documents are being agreed to the</p> <p>15:19 17 clients underlying general ledger, or can you just</p> <p>15:19 18 explain that to me?</p> <p>15:19 19 A. From reading it, it says it "Agrees directly to</p> <p>15:19 20 notes receivable." That would indicate to me that there</p> <p>15:19 21 was some notes receivable that they were agreed to, or</p> <p>15:19 22 related party receivables which may have come from a</p> <p>15:19 23 general ledger on the related party side. Or notes</p> <p>15:19 24 payable and/or other payables. So it appears that there</p> <p>15:19 25 is a variety of sources that they are confirming those to</p>

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<p>15:19 1 or verifying them with.</p> <p>15:19 2 Q. Okay. The check with an X or a slash, hash</p> <p>15:19 3 mark in it, and that's right below this naked check mark</p> <p>15:20 4 legend. What does that legend mean? "Agreed w/o/m/e"?</p> <p>15:20 5 A. I don't know exactly what the w/o/m/e stands</p> <p>15:20 6 for. I would be making an assumption, but I think it has</p> <p>15:20 7 to do with materiality.</p> <p>15:20 8 Q. How about the X that's just to the right of</p> <p>15:20 9 that? Looks like "non-operating assets" to something</p> <p>15:20 10 "equity," I can't read it.</p> <p>15:20 11 A. Well, I agree with you, it does say</p> <p>15:20 12 "non-operating assets to." I can't read it either.</p> <p>15:21 13 MR. CHRISTMAS: Can we take a break for a</p> <p>15:21 14 minute.</p> <p>15:31 15 (Recess taken.)</p> <p>15:31 16 MR. CHRISTMAS: This is 42.</p> <p>15:31 17 (Exhibit 42 was marked for identification.)</p> <p>15:31 18 BY MR. CHRISTMAS:</p> <p>15:31 19 Q. Mr. Dye, the court reporter has handed you</p> <p>15:31 20 Exhibit 42 to the Stoughton Davidson deposition. If you</p> <p>15:31 21 go to the page marked SD 00046, it starts there. Do you</p> <p>15:32 22 recognize this document?</p> <p>15:32 23 A. It appears to be the title page to the SK Foods</p> <p>15:32 24 LP audit.</p> <p>15:32 25 Q. Have you ever seen this document before?</p>	<p>15:33 1 initial subpoena, and I believe the amended ones that</p> <p>15:33 2 were additionally attached, which would be Stoughton</p> <p>15:33 3 Davidson, I believe 1 through 41, as well as SD 42</p> <p>15:34 4 through 51, and the additional documents that I provided</p> <p>15:34 5 you today.</p> <p>15:34 6 Q. Was Mr. Bristol involved in preparation of the</p> <p>15:34 7 audit?</p> <p>15:34 8 A. He was the engagement partner.</p> <p>15:34 9 Q. So Ms. Garone reported to him?</p> <p>15:34 10 A. That would be correct.</p> <p>15:34 11 Q. And did you speak to Mr. Bristol before you</p> <p>15:34 12 came here today?</p> <p>15:34 13 A. No, I did not.</p> <p>15:34 14 Q. Did you speak with Ms. Garone before you came</p> <p>15:34 15 here today?</p> <p>15:34 16 A. Yes, I did.</p> <p>15:34 17 Q. And what did you discuss with her?</p> <p>15:34 18 A. I clarified my understanding of what was</p> <p>15:34 19 represented within some of these e-mails and the</p> <p>15:35 20 documents that were initially provided.</p> <p>15:35 21 Q. And when you say "documents provided," you mean</p> <p>15:35 22 produced by Stoughton Davidson?</p> <p>15:35 23 A. Correct.</p> <p>15:35 24 MR. CHRISTMAS: Let's go to 49.</p> <p>15:35 25 (Exhibit 49 was marked for identification.)</p>
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<p>15:32 1 A. I can't recall. I may have.</p> <p>15:32 2 Q. Did you look at it before coming here today?</p> <p>15:32 3 A. Not within the last -- not in preparing for</p> <p>15:32 4 this, no.</p> <p>15:32 5 Q. Do you have any understanding of the procedures</p> <p>15:32 6 that were followed to -- and I don't mean in the</p> <p>15:32 7 hypothetical, the actual procedures that were followed to</p> <p>15:32 8 create these financial statements?</p> <p>15:32 9 A. All standard audit procedures deemed necessary</p> <p>15:32 10 for an audit.</p> <p>15:32 11 Q. I didn't mean in the hypothetical, I mean what</p> <p>15:32 12 actual procedures were followed?</p> <p>15:33 13 A. Well, I suspect if I wanted to tell you, we</p> <p>15:33 14 could take all day.</p> <p>15:33 15 Q. I don't mean what. I mean, are you familiar</p> <p>15:33 16 with what your colleagues did to create these financial</p> <p>15:33 17 statements?</p> <p>15:33 18 A. I'm familiar with what they probably did, yes.</p> <p>15:33 19 I did not review their work, as I stated earlier.</p> <p>15:33 20 Q. And did they consult with you while they did</p> <p>15:33 21 their work?</p> <p>15:33 22 A. No.</p> <p>15:33 23 Q. Can you tell me what you did review before</p> <p>15:33 24 coming here today?</p> <p>15:33 25 A. The documents that were in response to the</p>	<p>15:35 1 BY MR. CHRISTMAS:</p> <p>15:35 2 Q. Mr. Dye, the court reporter has handed you</p> <p>15:36 3 Exhibit 49 to the Stoughton Davidson deposition. It's</p> <p>15:36 4 actually, I'll call it a group exhibit. There appear to</p> <p>15:36 5 me to be two different letters here, pages SD -- and</p> <p>15:36 6 there's no space -- 000042 through 46, appear to be one</p> <p>15:36 7 document, although they all have sequential faxed page</p> <p>15:36 8 numbers at the top apparently, and then the second</p> <p>15:36 9 document starts at SD000047.</p> <p>15:36 10 There may be other differences between the</p> <p>15:36 11 documents, but if you could turn to -- well, first, have</p> <p>15:36 12 you ever seen these documents before?</p> <p>15:36 13 A. Yes, I have.</p> <p>15:37 14 Q. Can you tell me what they are?</p> <p>15:37 15 A. They are the engagement letters for the</p> <p>15:37 16 agreed-upon procedures.</p> <p>15:37 17 Q. Do you know why there are two different</p> <p>15:37 18 letters?</p> <p>15:37 19 A. The first letter is addressing mostly only</p> <p>15:37 20 inventory issues. The second letter includes step ten,</p> <p>15:37 21 or a tenth procedure which was to perform an analysis of</p> <p>15:37 22 the current value of the companies. It says "Investment</p> <p>15:37 23 in Grantor Trust, SSCL, which holds the Cedenco notes</p> <p>15:37 24 receivable and payable."</p> <p>15:37 25 Q. Does one of these letters supercede the other?</p>

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<p>15:37 1 A. I would say yes. The one that has the tenth 15:37 2 procedure added to it would supercede, however, I don't 15:37 3 believe there's any change to the first nine procedures. 15:37 4 Q. So paragraph ten was an addition, rather than a 15:38 5 subtraction? 15:38 6 A. That's correct. 15:38 7 Q. Can you explain what procedure number ten is? 15:38 8 A. It was Mr. Salyer's request, because he 15:38 9 believed that the value of those notes had been impaired 15:38 10 and he wanted to determine what impairment there may or 15:38 11 may not have been at a period of about December 31st, 15:38 12 2008. He indicated it might have some tax impact to him. 15:38 13 Q. And when you say he had those thoughts, what's 15:38 14 the basis of your understanding of that? 15:38 15 A. An e-mail from Mr. Salyer. 15:38 16 Q. Okay. Do you know if that e-mail was part of 15:38 17 the document production? 15:38 18 A. It was part of today's production. 15:38 19 Q. Was that procedure, number ten, carried out? 15:39 20 A. No. 15:39 21 Q. Why was it not carried out? 15:39 22 A. We never got that far. 15:39 23 Q. So no part of procedure number ten was carried 15:39 24 out at all? 15:39 25 A. According to an e-mail from Mr. Bristol,</p>	<p>15:42 1 MR. NICHOLSON: What was the number on that? 15:42 2 MR. CHRISTMAS: 68. 15:42 3 (Exhibit 68 was marked for identification.) 15:42 4 BY MR. CHRISTMAS: 15:42 5 Q. Mr. Dye, could you turn to SD Supp 004. This 15:42 6 appears to be a series of e-mails. It starts 15:43 7 chronologically on that page and goes back to the prior 15:43 8 page. There's an e-mail from Mr. Salyer, May 12, 2009, 15:43 9 at 8:24 a.m., and a series of e-mails ending with an 15:43 10 e-mail from Mr. Bristol. 15:43 11 They do span a fair period of time here, over a 15:43 12 year. Let's start with the one from Mr. Salyer to you. 15:43 13 Now, this e-mail is dated May 12, 2009. Have you seen 15:43 14 this e-mail before your preparation for today? 15:43 15 A. Yes. 15:43 16 Q. So you received it on May 1, 2009? 15:43 17 A. Appears that way. 15:43 18 Q. And what's Mr. Salyer writing to you about? 15:44 19 A. Again, this would be the issue on the 15:44 20 agreed-upon procedure ten. 15:44 21 Q. Okay. He says there "Reported 18 million at 15:44 22 6/30/08, we believe the value is much less." 15:44 23 Did he explain to you why he believed the value 15:44 24 was much less? 15:44 25 A. I believe somewhere there was some indication</p>
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<p>15:39 1 actually it's a summary which was in the items produced 15:39 2 today, a memo dated through April 24th of '09 indicates 15:39 3 that there had been some review of companies e-mail 15:39 4 strands and other information provided by e-mail, as well 15:39 5 as review documents provided at the time of the June 30, 15:39 6 '08 audit, however Stoughton Davidson was still to 15:39 7 discuss valuation methods with management, as well as 15:39 8 management was to provide an analysis which had not been 15:39 9 performed. 15:39 10 Q. Are you reading from a document? 15:40 11 A. Yes, I am. 15:40 12 MR. NICHOLSON: Can I stop -- 15:40 13 MR. CHRISTMAS: Mark that? 15:40 14 MR. NICHOLSON: He is reading from a document. 15:40 15 He has the originals that he brought. They got the Bates 15:40 16 stamp after he got here. 15:40 17 THE WITNESS: I was reading on SD Supp 009. 15:40 18 MR. CHRISTMAS: I guess we should mark that. 15:41 19 Why don't we mark what was produced today. We'll mark it 15:41 20 as a group exhibit. Let's do it as 68. 15:42 21 MR. NUTI: The entire package? 15:42 22 MR. CHRISTMAS: Yeah. 15:42 23 MR. NICHOLSON: So that's SD Supp 1 through SD 15:42 24 Supp 9. 15:42 25 MR. CHRISTMAS: Yeah.</p>	<p>15:44 1 of foreign currency transactions that decreased the 15:44 2 value. 15:44 3 Q. And when he says "the Cedenco note" here, can 15:44 4 you explain your understanding of what that note was? 15:44 5 A. My understanding from the SK perspective is 15:44 6 that is a netting of all the payables and receivables 15:44 7 from the foreign subsidiaries which had been transferred 15:44 8 to the trust, which is sitting on the books of SK in the 15:44 9 amount of 18,200,000 some odd thousand dollars, I 15:45 10 believe, from the trust. 15:45 11 Q. Do you know the terms of payment of the note? 15:45 12 A. No, I don't, but on the financial statements 15:45 13 it's classified as long-term, and I believe if you looked 15:45 14 at the audit work paper that we reviewed earlier, there 15:45 15 is indications that the bank would not allow any 15:45 16 transfers or reduction in that, so it is considered not 15:45 17 to be paid within the next 12 months, but at some time 15:45 18 thereafter, and from that indication there would be no 15:45 19 fixed terms with the bank controlling. 15:45 20 Q. There would not be any fixed terms? You 15:45 21 mean -- 15:45 22 A. Until there was paid off within the bank, and 15:45 23 that's -- I'd have to find the work paper that you 15:45 24 provided me earlier. It says -- 15:45 25 Q. Can you refer, for the record, by exhibit</p>

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<p>15:46 1 number.</p> <p>15:46 2 A. Exhibit 38. It is referred to as Investment in</p> <p>15:46 3 SK Foods Australia in '07. In '08, Investment in Foreign</p> <p>15:46 4 Affiliates is the title of the account. However, it's</p> <p>15:46 5 highlighted and described down below that "These payables</p> <p>15:46 6 and receivables are subordinated debt on both the side of</p> <p>15:46 7 SK and the foreign related parties. Per the bank</p> <p>15:46 8 covenants, there are to be no related party payments. As</p> <p>15:46 9 such, this amount is not going to change until all loans</p> <p>15:46 10 have been paid off. Appears reasonable and per review of</p> <p>15:46 11 the SK bank agreement with BMO, Section 5, B-1," I</p> <p>15:46 12 believe it says "the payables to the foreign related</p> <p>15:46 13 parties are subordinated debt."</p> <p>15:46 14 Q. Do you know if any reserve was established for</p> <p>15:46 15 suspension of payment?</p> <p>15:46 16 A. Based on the Exhibit 42, note eight, which is</p> <p>15:47 17 transactions with related parties, which you'll find on</p> <p>15:47 18 SD 63 back there, you'll see that the revocable trust</p> <p>15:47 19 receivable is in full at the \$18,262,000, does not appear</p> <p>15:47 20 to have any reserve applied, because if you go again in</p> <p>15:47 21 that exhibit to page 49, you will see that the 22,406 is</p> <p>15:47 22 carried forward to the balance sheet as related party</p> <p>15:47 23 receivables of 22,406.</p> <p>15:47 24 Q. So do you know what analysis was done in order</p> <p>15:47 25 to support the statement of the receivable at apparently</p>	<p>15:49 1 consultants at the time when, in fact, ten was added to</p> <p>15:49 2 the engagement letter, and I think we have provided in</p> <p>15:49 3 our production the copy that was originally sent to him,</p> <p>15:49 4 and he returned with some notes on it which is in the</p> <p>15:49 5 original production titled SD 0004.</p> <p>15:49 6 Q. Is that the SD no spaces 0004?</p> <p>15:50 7 A. Correct.</p> <p>15:50 8 MR. CHRISTMAS: Those are all the questions I</p> <p>15:50 9 have at this time, subject obviously to recalling a</p> <p>15:51 10 representative of Stoughton Davidson who's properly</p> <p>15:51 11 prepared.</p> <p>15:51 12 MR. NICHOLSON: I'm just going to object to</p> <p>15:51 13 that last comment. I don't know that there was anything</p> <p>15:51 14 you asked in the subpoena that Mr. Dye wasn't prepared to</p> <p>15:51 15 talk about today.</p> <p>15:51 16 MS. WOODRUFF: I second that objection, and I</p> <p>15:51 17 would also object to any further depositions being taken</p> <p>15:51 18 of Stoughton Davidson.</p> <p>15:51 19 MR. NUTI: I tend to agree with the liquidator.</p> <p>15:51 20 As I understand it, the witness did not participate in</p> <p>15:51 21 the actual audit that produced document SD 42.</p> <p>15:51 22 MR. NICHOLSON: And that may be -- excuse me.</p> <p>15:51 23 MR. NUTI: He can't testify as to whether or</p> <p>15:51 24 not anybody of Stoughton Davidson looked at the legal</p> <p>15:51 25 documents underlying the transactions reflected in there.</p>
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<p>15:48 1 face value?</p> <p>15:48 2 MR. NICHOLSON: Objection. Vague and</p> <p>15:48 3 ambiguous.</p> <p>15:48 4 THE WITNESS: No, I do not.</p> <p>15:48 5 BY MR. CHRISTMAS:</p> <p>15:48 6 Q. Do you know if any analysis of that note was</p> <p>15:48 7 done to determine its collectability?</p> <p>15:48 8 MR. NICHOLSON: Objection. Vague and</p> <p>15:48 9 ambiguous.</p> <p>15:48 10 THE WITNESS: I do not.</p> <p>15:48 11 BY MR. CHRISTMAS:</p> <p>15:48 12 Q. Turning back to group Exhibit 68 and SD Supp</p> <p>15:48 13 004, Mr. Salyer writes "Additionally, the note could</p> <p>15:48 14 affect my personal tax situation." Do you have an</p> <p>15:48 15 understanding as to what he meant by that?</p> <p>15:48 16 A. No, I think you would have had --</p> <p>15:48 17 MS. WOODRUFF: Sorry, objection. Lacks</p> <p>15:49 18 foundation, calls for speculation.</p> <p>15:49 19 MR. CHRISTMAS: You can answer.</p> <p>15:49 20 THE WITNESS: The answer is "no."</p> <p>15:49 21 BY MR. CHRISTMAS:</p> <p>15:49 22 Q. Did you ever have any conversations by</p> <p>15:49 23 telephone with Mr. Salyer about procedure number ten?</p> <p>15:49 24 A. I can't recall specifically. There was a group</p> <p>15:49 25 discussion with Mr. Salyer and I believe other</p>	<p>15:51 1 MR. NICHOLSON: That may be. I think if you</p> <p>15:51 2 look back at the subpoena, there was nothing having to do</p> <p>15:51 3 with the audit in the subpoena itself.</p> <p>15:52 4 MR. NUTI: I don't see --</p> <p>15:52 5 MR. NICHOLSON: Excuse me. To the extent you</p> <p>15:52 6 supplement the subpoena, if there are additional</p> <p>15:52 7 categories you're looking for, we'd be happy to take</p> <p>15:52 8 another look at it. I object and resent the notion that</p> <p>15:52 9 Mr. Dye has come here unprepared today. I think he was</p> <p>15:52 10 very prepared to talk about the subjects you actually</p> <p>15:52 11 categorized and gave him.</p> <p>15:52 12 MR. NUTI: You want to go off the record for a</p> <p>15:52 13 minute?</p> <p>15:52 14 MR. CHRISTMAS: Okay.</p> <p>15:57 15 (Discussion off the record.)</p> <p>15:57 16 MR. CHRISTMAS: Ms. Woodruff I guess has the</p> <p>15:57 17 floor.</p> <p>15:57 18 You have more questions?</p> <p>15:57 19 MS. WOODRUFF: Yeah.</p> <p>15:57 20 EXAMINATION BY MS. WOODRUFF</p> <p>15:57 21 Q. Hi, Mr. Dye. I want to follow-up and ask you a</p> <p>15:57 22 few questions. Before I do, I want to put on the record</p> <p>15:57 23 that the Australian liquidator and his counsel, as well</p> <p>15:57 24 as counsel for the trustee and the counsel for the</p> <p>15:57 25 Unsecured Creditors Committee stepped out into the hall</p>

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<p>15:57 1 to confer amongst themselves during the time that we were</p> <p>15:57 2 off the record.</p> <p>15:58 3 Mr. Dye, you are here testifying on behalf of</p> <p>15:58 4 Stoughton Davidson, correct?</p> <p>15:58 5 A. That is correct.</p> <p>15:58 6 Q. And as you sit here today, are you prepared to</p> <p>15:58 7 testify to the extent that Stoughton Davidson has any</p> <p>15:58 8 knowledge about the assignment, transfer, distribution or</p> <p>15:58 9 sale of any ownership interest in SK Foods Australia?</p> <p>15:58 10 A. The only knowledge we have was that this is a</p> <p>15:58 11 transaction that occurred November 1st, 2006, prior to</p> <p>15:58 12 our audit and, in fact, almost a full year prior to</p> <p>15:58 13 audit, was included in the audit prior to us, and we</p> <p>15:58 14 would not go back and look at documents and transactions</p> <p>15:58 15 that occurred in prior periods, particularly when they've</p> <p>15:58 16 been audited by a firm such as Moss Adams.</p> <p>15:58 17 Q. Okay. Thank you.</p> <p>15:58 18 And are you, as you sit here today, prepared to</p> <p>15:58 19 testify on behalf of Stoughton Davidson about the</p> <p>15:59 20 transfer of shares or other ownership interests in SK</p> <p>15:59 21 Foods Australia, by SK Foods Limited Partnership, which</p> <p>15:59 22 is the California limited partnership that's in</p> <p>15:59 23 bankruptcy here, to the Scott Salyer revocable trust and</p> <p>15:59 24 SKPM corporation effective November 1, 2006?</p> <p>15:59 25 MR. CHRISTMAS: Alleged transfer.</p>	<p>16:00 1 of the ownership interests of the Australian subsidiary,</p> <p>16:00 2 or of the debt?</p> <p>16:00 3 A. There was both, transfers of ownership interest</p> <p>16:00 4 and debt.</p> <p>16:00 5 Q. Okay. And to the best of your knowledge, the</p> <p>16:01 6 debt as well as the ownership interests were transferred</p> <p>16:01 7 to a trust entitled Scott Salyer revocable trust?</p> <p>16:01 8 A. That's our understanding from the audit</p> <p>16:01 9 conducted by Moss Adams and our review of that.</p> <p>16:01 10 Q. As you sit here today are you prepared to</p> <p>16:01 11 testify about any transfer of SKPM corporation to</p> <p>16:01 12 Monterey Peninsula Farming of any ownership interest in</p> <p>16:01 13 SK Foods Australia?</p> <p>16:01 14 A. No, I have no knowledge of that transfer.</p> <p>16:01 15 Q. Is there anybody at Stoughton Davidson --</p> <p>16:01 16 A. Excuse me, let me clarify. SKPM Corp?</p> <p>16:01 17 Q. Correct.</p> <p>16:01 18 A. Did we say Monterey Peninsula? Because in the</p> <p>16:01 19 work papers the transfer of ownership interest indicates</p> <p>16:01 20 that it was the other partner, which was SKPM Corp, and</p> <p>16:01 21 therefore the interest would have been transferred.</p> <p>16:01 22 Q. To SKPM Corp?</p> <p>16:01 23 A. Right.</p> <p>16:01 24 Q. And that transfer that you're referring to is</p> <p>16:02 25 the transfer that occurred on November 1st, 2006?</p>
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<p>15:59 1 THE WITNESS: Again, our only knowledge of that</p> <p>15:59 2 is from the prior year audit conducted by Moss Adams</p> <p>15:59 3 indicating that that transfer took place on November 1st,</p> <p>15:59 4 2006. We relied on Moss Adams' audit.</p> <p>15:59 5 BY MS. WOODRUFF:</p> <p>15:59 6 Q. And as you sit here today are you prepared to</p> <p>15:59 7 testify on behalf of Stoughton Davidson concerning any</p> <p>15:59 8 assignment, transfer, distribution or sale of any debt of</p> <p>15:59 9 SK Foods Australia owing to SK Foods Limited Partnership?</p> <p>15:59 10 A. Again, any knowledge we have of that relates to</p> <p>15:59 11 the prior audit that we relied on.</p> <p>15:59 12 Q. As you sit here today are you prepared to</p> <p>15:59 13 testify about any conveyance to the SSC&L 2007 trust</p> <p>16:00 14 effective November 1, 2006, whether by assignment,</p> <p>16:00 15 transfer, distribution, sale or otherwise of debt of SK</p> <p>16:00 16 Foods Australia owing to SK Foods Limited Partnership?</p> <p>16:00 17 A. The SSCL trust, I need clarification because</p> <p>16:00 18 I've seen this thing referred to as the SSCL trust, I've</p> <p>16:00 19 seen it referred to as the Scott Salyer revocable trust.</p> <p>16:00 20 I'm not sure they're interchangeable, if they are. We</p> <p>16:00 21 only know of the transfer that went to in the work papers</p> <p>16:00 22 indicating that Scott Salyer revocable trust in November.</p> <p>16:00 23 If it's one and the same, then yes.</p> <p>16:00 24 Q. And when you're referring to the transfer that</p> <p>16:00 25 occurred to the trust, are you referring to the transfer</p>	<p>16:02 1 A. Correct.</p> <p>16:02 2 Q. According to the Moss Adams audited financial</p> <p>16:02 3 statements?</p> <p>16:02 4 A. That is correct.</p> <p>16:02 5 Q. And do you know whether there's anybody at</p> <p>16:02 6 Stoughton Davidson who has any knowledge about any</p> <p>16:02 7 subsequent transfer from SKPM Corporation to Monterey</p> <p>16:02 8 Peninsula Farming?</p> <p>16:02 9 A. To the best of my knowledge, no.</p> <p>16:02 10 Q. Okay. As you sit here today, are you prepared</p> <p>16:02 11 to testify about any transfer --</p> <p>16:02 12 (Interruption of phone ringing).</p> <p>16:02 13 MR. NICHOLSON: Can we go off the record for a</p> <p>16:02 14 second.</p> <p>16:02 15 MR. CHRISTMAS: Sure.</p> <p>16:02 16 (Discussion off the record.)</p> <p>16:02 17 BY MS. WOODRUFF:</p> <p>16:02 18 Q. -- any transfer by SKPM -- well, that seems to</p> <p>16:03 19 be the same. Strike that.</p> <p>16:03 20 As you sit here today, Mr. Dye, are you</p> <p>16:03 21 prepared to testify on behalf of Stoughton Davidson</p> <p>16:03 22 concerning any transfer by the Scott Salyer revocable</p> <p>16:03 23 trust to Monterey Peninsula Farming of any ownership</p> <p>16:03 24 interest in SK Foods Australia?</p> <p>16:03 25 A. I have no knowledge of any transfer from the</p>

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<p>16:03 1 trust to Monterey Peninsula.</p> <p>16:03 2 Q. To your knowledge is there anybody at Stoughton</p> <p>16:03 3 Davidson who has knowledge of transfer from the Scott</p> <p>16:03 4 Salyer revocable trust to Monterey Peninsula Farming?</p> <p>16:03 5 A. To the best of my knowledge, no, there's no</p> <p>16:03 6 one.</p> <p>16:03 7 Q. As you sit here today, Mr. Dye, are you</p> <p>16:03 8 prepared to testify on behalf of Stoughton Davidson</p> <p>16:03 9 concerning any transfer by Monterey Peninsula Farming of</p> <p>16:03 10 any ownership interest in SK Foods Australia to any</p> <p>16:03 11 party?</p> <p>16:03 12 A. I have no knowledge of Monterey Peninsula</p> <p>16:04 13 Farming transferring any assets.</p> <p>16:04 14 Q. To the best of your knowledge is there anybody</p> <p>16:04 15 at Stoughton Davidson who has any knowledge of a transfer</p> <p>16:04 16 by Monterey Peninsula Farming of any ownership interest</p> <p>16:04 17 in SK Foods Australia?</p> <p>16:04 18 A. As far as I know, there is no one.</p> <p>16:04 19 Q. All right. As you sit here today are you</p> <p>16:04 20 prepared to testify concerning the stockholders, members</p> <p>16:04 21 or any other types of holders of ownership interests in</p> <p>16:04 22 Cedenco JV Australia or SK Foods Australia?</p> <p>16:04 23 A. I'd have to double-check the transfers. The</p> <p>16:04 24 only transfers we're aware of were the transfers that</p> <p>16:04 25 took place November 1, 2006.</p>	<p>16:06 1 "subsidiaries." They ended up combining to a balance of</p> <p>16:06 2 18,262,149, which was transferred to the Scott Salyer</p> <p>16:06 3 trust as indicated in the work papers provided to us.</p> <p>16:07 4 MR. CHRISTMAS: Are you reading off a document,</p> <p>16:07 5 sir?</p> <p>16:07 6 THE WITNESS: I'm looking at SD 27, which was,</p> <p>16:07 7 I believe, a Moss Adams document which shows which</p> <p>16:07 8 accounts were consolidated.</p> <p>16:07 9 BY MS. WOODRUFF:</p> <p>16:07 10 Q. I'm sorry, you said SD 000027?</p> <p>16:07 11 A. 27 in our production.</p> <p>16:08 12 MS. WOODRUFF: Can we go off the record for a</p> <p>16:08 13 moment.</p> <p>16:08 14 (Discussion off the record.)</p> <p>16:08 15 (Exhibit 69 was marked for identification.)</p> <p>16:08 16 BY MS. WOODRUFF:</p> <p>16:17 17 Q. I've asked the court reporter to mark a</p> <p>16:17 18 document you produced, SD 27, and it's been marked by the</p> <p>16:17 19 court reporter has Exhibit 69. Do you see that?</p> <p>16:17 20 A. I do.</p> <p>16:17 21 Q. Can you tell me what this is?</p> <p>16:17 22 A. I believe it is a schedule relating to the</p> <p>16:18 23 balance as of June 30th, 2007, for the accumulation and</p> <p>16:18 24 consolidation of the receivables and payables that were</p> <p>16:18 25 either transferred or sold to the revocable trust.</p>
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<p>16:05 1 Q. And as you sit here today are you prepared to</p> <p>16:05 2 testify about the identity and owner of any debt that was</p> <p>16:05 3 originally between SK Foods Limited Partnership on the</p> <p>16:05 4 one hand and any SK Foods related entity from New Zealand</p> <p>16:05 5 or Australia on the other hand?</p> <p>16:05 6 A. I'm not sure I quite understand that question.</p> <p>16:05 7 Q. Okay. I'm trying to broaden the topics. As</p> <p>16:05 8 you sit here today are you prepared to testify on behalf</p> <p>16:05 9 of Stoughton Davidson concerning who holds the notes</p> <p>16:05 10 payable or notes receivable as between SK Foods limited</p> <p>16:05 11 partnership on the one hand and notes that were</p> <p>16:05 12 originally issued by or to any SK Foods related entity in</p> <p>16:05 13 Australia or New Zealand?</p> <p>16:05 14 A. As of what time?</p> <p>16:05 15 Q. As of any time.</p> <p>16:06 16 A. As of November 1st, 2006, I can testify as to</p> <p>16:06 17 what notes were transferred to the revocable trust. From</p> <p>16:06 18 that point forward, we have no knowledge as to what the</p> <p>16:06 19 revocable trust may or may not have done with those</p> <p>16:06 20 underlying assets.</p> <p>16:06 21 Q. Okay. So what can you tell us about the</p> <p>16:06 22 transfer of the notes on November 1st, 2006?</p> <p>16:06 23 A. SK Foods consolidated a number of accounts at</p> <p>16:06 24 that point in time, both receivables and payables to</p> <p>16:06 25 foreign -- I'll use the term "affiliates,"</p>	<p>16:18 1 Q. Is this a Stoughton Davidson work paper?</p> <p>16:18 2 A. No, it is not.</p> <p>16:18 3 Q. Is this a Moss Adams work paper?</p> <p>16:18 4 A. I cannot testify to whose work paper it is,</p> <p>16:18 5 other than it is not a Stoughton Davidson, but to the</p> <p>16:18 6 best of my knowledge, it is a Moss Adams.</p> <p>16:18 7 Q. Okay. Thank you.</p> <p>16:18 8 The little notations on the side, there a</p> <p>16:18 9 couple of 1s in circles and then summation and another 1</p> <p>16:18 10 in a circle. Are those Stoughton Davidson markings?</p> <p>16:18 11 A. I don't believe so. Again, I believe this is</p> <p>16:18 12 part of the Moss Adams work papers, and those 1s</p> <p>16:18 13 accumulate to the four million eight.</p> <p>16:18 14 Q. Okay. Is this a document that you reviewed in</p> <p>16:18 15 preparation for your deposition today?</p> <p>16:19 16 A. I did review it, yes.</p> <p>16:19 17 Q. And so, to the best of your knowledge, this is</p> <p>16:19 18 a document that Moss Adams used in coming up with the</p> <p>16:19 19 amount of the net receivable, 18.2 million roughly, that</p> <p>16:19 20 appeared in the audited financial statements for 2007?</p> <p>16:19 21 A. That would be correct.</p> <p>16:19 22 Q. Let me just see if I have --</p> <p>16:19 23 You testified at the beginning of your</p> <p>16:19 24 deposition that you have both audit and tax experience.</p> <p>16:19 25 Is that right?</p>

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<p>16:19 1 A. That would be correct.</p> <p>16:19 2 Q. All right. In your experience in your career</p> <p>16:19 3 having conducted audits, would you have -- let me back</p> <p>16:19 4 up.</p> <p>16:19 5 You've testified today that the information</p> <p>16:19 6 that you are aware of, that Stoughton Davidson is aware</p> <p>16:19 7 of, concerning the transfer of the Australian</p> <p>16:19 8 subsidiaries to the SKPM corp and the Scott Salyer trust,</p> <p>16:20 9 as well as the transfer of the debt, that your knowledge</p> <p>16:20 10 of those were based on the audited financial statements</p> <p>16:20 11 and work papers from Moss Adams. Is that accurate?</p> <p>16:20 12 A. That is correct.</p> <p>16:20 13 Q. In your experience as an auditor, in relying on</p> <p>16:20 14 previously audited financial statements, would it be a</p> <p>16:20 15 common practice to look to the underlying documents</p> <p>16:20 16 supporting various line items in previously audited</p> <p>16:20 17 financial statements?</p> <p>16:20 18 MR. NICHOLSON: I'm going to object because I</p> <p>16:20 19 think you're asking him an expert opinion there. I would</p> <p>16:20 20 instruct him to go ahead and answer it, but I don't want</p> <p>16:20 21 to go too far down the road here. He's not being paid as</p> <p>16:20 22 an expert witness.</p> <p>16:20 23 MR. LEWIS: Bank of Montreal, also objects,</p> <p>16:20 24 improper lay testimony.</p> <p>16:20 25 MR. NICHOLSON: You can go ahead and answer,</p>	<p>16:22 1 questions.</p> <p>16:22 2 MR. NUTI: I think I can -- have a couple</p> <p>16:22 3 questions of this witness, and then I think I might be</p> <p>16:22 4 done.</p> <p>16:22 5 EXAMINATION BY MR. NUTI</p> <p>16:22 6 Q. It's my understanding that the Moss Adams audit</p> <p>16:22 7 reflects a transfer of a loan or an amount receivable to</p> <p>16:22 8 the SSC&L trust. Is that correct?</p> <p>16:22 9 A. The audit and footnotes to that audit do not</p> <p>16:22 10 indicate who it was transferred to, but indicates it was</p> <p>16:22 11 transferred to a partner. Whether it was the SSCL trust</p> <p>16:23 12 or a Scott Salyer revocable trust, because the work</p> <p>16:23 13 papers only refer to capital S Salyer revocable trust. I</p> <p>16:23 14 don't know if that's the same trust that everybody refers</p> <p>16:23 15 to as the SSCL trust.</p> <p>16:23 16 Q. Well, you understand that there was two</p> <p>16:23 17 separate transactions reflected in that footnote, and one</p> <p>16:23 18 was a distribution of equity to the two partners?</p> <p>16:23 19 A. Correct.</p> <p>16:23 20 Q. One being SKPM corp, the other being the</p> <p>16:23 21 Scott Salyer Revocable trust?</p> <p>16:23 22 A. Okay.</p> <p>16:23 23 Q. Another aspect of the divestiture of the</p> <p>16:23 24 investments in the foreign entities was a divestiture of</p> <p>16:23 25 notes receivable from Australia and New Zealand, correct?</p>
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<p>16:20 1 Mr. Dye.</p> <p>16:21 2 THE WITNESS: Could you repeat the question.</p> <p>16:21 3 BY MS. WOODRUFF:</p> <p>16:21 4 Q. Would it be a normal practice of you as an</p> <p>16:21 5 auditor, in your experience as an auditor, to ask to see</p> <p>16:21 6 the underlying documents supporting a specific line item</p> <p>16:21 7 and previously audited financial statements?</p> <p>16:21 8 A. If you're referring to the underlying legal</p> <p>16:21 9 documents that would be supportive of these or the</p> <p>16:21 10 transaction that included the transfers, not normally.</p> <p>16:21 11 Q. Okay. Under what circumstances would you ask</p> <p>16:21 12 to see, for example, the loan agreements between the</p> <p>16:21 13 various Cedenco entities and SK Foods if you were</p> <p>16:21 14 conducting the audit?</p> <p>16:21 15 MR. LEWIS: Objection. Improper lay testimony.</p> <p>16:21 16 THE WITNESS: Can you repeat.</p> <p>16:21 17 BY MS. WOODRUFF:</p> <p>16:21 18 Q. Under what circumstances? You said</p> <p>16:21 19 "previously," not "normally," so under what circumstances</p> <p>16:22 20 would you ask to see the underlying documents to support</p> <p>16:22 21 a transaction?</p> <p>16:22 22 A. I believe that the only time you might consider</p> <p>16:22 23 that would be is if something had come to your attention</p> <p>16:22 24 prior to your review of the prior auditor's work papers.</p> <p>16:22 25 MS. WOODRUFF: Okay. I have no further</p>	<p>16:23 1 A. Correct.</p> <p>16:23 2 MS. WOODRUFF: Objection. Misstates prior</p> <p>16:23 3 testimony, even this witness's prior testimony that it</p> <p>16:23 4 wasn't just notes receivable that were transferred to the</p> <p>16:23 5 trust.</p> <p>16:23 6 BY MR. NUTI:</p> <p>16:24 7 Q. And obligations that were transferred by SK</p> <p>16:24 8 Foods to a trust?</p> <p>16:24 9 A. To a revocable trust, right.</p> <p>16:24 10 Q. What is your understanding of the date of those</p> <p>16:24 11 transactions?</p> <p>16:24 12 A. According to the footnote, those transactions</p> <p>16:24 13 occurred November 1st, 2006.</p> <p>16:24 14 MR. NUTI: Will you mark that 70.</p> <p>16:24 15 (Exhibit 70 was marked for identification.)</p> <p>16:24 16 BY MR. NUTI:</p> <p>16:24 17 Q. Mr. Dye, can you take a look at what's been</p> <p>16:24 18 marked as Exhibit 70. The exhibit is a letter dated</p> <p>16:25 19 December 18, 2007, correct?</p> <p>16:25 20 A. That's correct.</p> <p>16:25 21 Q. And from the letter, it appears it is from</p> <p>16:25 22 Gary Perry, a lawyer for SK Foods, he also had other</p> <p>16:25 23 clients at the time, sending to Mr. Salyer what is</p> <p>16:25 24 referred to as two execution originals of each of the</p> <p>16:25 25 following documents. One is SSC&L 2007 trust with a</p>

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<p>16:25 1 request "Please sign as settlor and trustee where 16:25 2 indicated on page 42." 16:26 3 I'll represent to you that there is a copy of 16:26 4 that trust document signed by Mr. Salyer sometime between 16:26 5 December 18th and the end of the year, suggesting that 16:26 6 the SSC&L trust was formed in 2007. 16:26 7 MR. NICHOLSON: Is there a question in there 16:26 8 somewhere? 16:26 9 MR. NUTI: Give me a second. 16:26 10 Mark this as 71. 16:26 11 (Exhibit 71 was marked for identification.) 16:26 12 MR. CHRISTMAS: Do you have a copy for us? 16:27 13 MR. NUTI: Sorry. 16:27 14 BY MR. NUTI: 16:27 15 Q. Have you had a chance to look at Document 16:27 16 Number 71, Mr. Dye? 16:27 17 A. Well, briefly. 16:27 18 Q. Take your time. 16:27 19 Can you tell me what this document appears to 16:27 20 be? 16:27 21 MR. NICHOLSON: Objection. The document speaks 16:27 22 for itself, also compound. 16:27 23 THE WITNESS: And I assume you're asking for a 16:27 24 lay opinion? 16:27 25 MR. NUTI: Of course.</p>	<p>16:29 1 BY MR. NUTI: 16:29 2 Q. Based on these documents, does that raise a 16:29 3 question in your mind of the validity of the Moss Adams 16:29 4 audit? 16:29 5 MR. NICHOLSON: Objection. Calls for improper 16:29 6 lay opinion. 16:29 7 MS. WOODRUFF: And objection, calls for a legal 16:29 8 conclusion. 16:29 9 THE WITNESS: Again, I don't know if there are 16:29 10 other documents relating to this or not. It does 16:29 11 indicate a difference in dates. That's all that I can 16:29 12 gather for fact out of this. 16:29 13 BY MR. NUTI: 16:29 14 Q. Does it raise a question in your mind as you 16:29 15 sit here today, and I assume seeing these for the first 16:29 16 time, of the validity and the accuracy of Moss Adams 16:29 17 audit? 16:29 18 MR. NICHOLSON: Objection. Lacks foundation. 16:29 19 THE WITNESS: Again, I'm not here to give an 16:29 20 opinion as to validity and quality of the Moss Adams 16:30 21 audit. I've never seen these documents before, I don't 16:30 22 know whether documents might be involved to substantiate 16:30 23 whatever they did. 16:30 24 BY MR. NUTI: 16:30 25 Q. In a vacuum, would this tend to make you</p>
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<p>16:27 1 THE WITNESS: It appears to be a debt 16:27 2 assignment agreement. 16:27 3 BY MR. NUTI: 16:27 4 Q. You notice it's dated January 14, 2008? 16:28 5 MS. WOODRUFF: Objection -- 16:28 6 MR. NICHOLSON: Objection. Vague and 16:28 7 ambiguous. 16:28 8 MS. WOODRUFF: Objection. Misstates the 16:28 9 evidence. Objection. The document speaks for itself. 16:28 10 THE WITNESS: The document itself does not have 16:28 11 any date in 2008 on it. 16:28 12 BY MR. NUTI: 16:28 13 Q. The letter itself. 16:28 14 A. The letter is dated January 14, 2008. 16:28 15 Q. And the debt assignment purports to be first 16:28 16 day of November, 2006 between the SSC&L 2007 trust, SK 16:28 17 Foods, and Cedenco Foods Limited New Zealand company 16:28 18 If, in fact, the SSC&L trust was not formed 16:28 19 until December, 2007, how is it that they could enter 16:29 20 into an agreement dated the first of November, 2006? 16:29 21 MS. WOODRUFF: Objection -- 16:29 22 THE WITNESS: I'm not here to give legal 16:29 23 opinions and I have no answer to that question. 16:29 24 MR. NICHOLSON: I'll join the objection, that's 16:29 25 an incomplete hypothetical.</p>	<p>16:30 1 investigate further? 16:30 2 MR. NICHOLSON: Objection. Improper lay 16:30 3 opinion. 16:30 4 THE WITNESS: In a vacuum, yes, I might 16:30 5 investigate further. 16:30 6 MR. NUTI: Thank you. I don't have any 16:30 7 questions. 16:30 8 EXAMINATION BY MR. DREHER 16:30 9 Q. Just a quick follow-up question. 16:30 10 Mr. Dye, I believe you testified that your 16:30 11 firm's understanding of the purported November 1st, 2006 16:30 12 transfer of the ownership of the Australian subsidiary 16:30 13 out of SK Foods LP is based on the Moss Adams 2007 audit. 16:30 14 Is that correct? 16:30 15 MR. NICHOLSON: Objection. Vague and 16:30 16 ambiguous, compound, misstated the evidence also. 16:30 17 BY MR. DREHER: 16:30 18 Q. Do you understand my question? 16:30 19 A. I believe so. Our understanding of that 16:30 20 transaction is based on Moss Adams' audit and work papers 16:31 21 provided that are included in these documents produced. 16:31 22 Q. Thank you, and that's my clarification 16:31 23 question, because I've heard you use the term "work 16:31 24 papers" a few times over the past hour. What do you mean 16:31 25 when you say "work papers"? What are you referring to?</p>

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<p>16:31 1 A. In performing an audit, to validate any account</p> <p>16:31 2 you create work papers that support them. Some of these</p> <p>16:31 3 documents here, for example, Exhibit 69 is presumably a</p> <p>16:31 4 work paper. Something like that would validate the</p> <p>16:31 5 18,262,000.</p> <p>16:31 6 MR. NICHOLSON: On a lighter note, I also add</p> <p>16:31 7 he's been answering questions for more than an hour.</p> <p>16:31 8 BY MR. DREHER:</p> <p>16:31 9 Q. Just to put the final point of clarification on</p> <p>16:31 10 it, then, have you or your firm ever seen any work papers</p> <p>16:31 11 supporting the purported November 1st, 2006 transfer of</p> <p>16:31 12 the equity of the Australian subsidiary out of SK Foods</p> <p>16:32 13 LP?</p> <p>16:32 14 A. I believe so.</p> <p>16:32 15 Q. Do you know if you've produced those documents?</p> <p>16:32 16 A. I believe so.</p> <p>16:32 17 Q. Can you show them to me?</p> <p>16:32 18 A. If you go to our production, under SD000030</p> <p>16:32 19 there is an adjusting journal entry there, number 35.</p> <p>16:32 20 MR. CHRISTMAS: For clarification, which</p> <p>16:32 21 production are you looking at? Does it have the space</p> <p>16:33 22 between the numbers or not?</p> <p>16:33 23 THE WITNESS: Our production, does not have a</p> <p>16:33 24 space.</p> <p>16:33 25 MR. NUTI: I'm sorry. It was number 30?</p>	<p>16:34 1 Mr. Dye?</p> <p>16:34 2 A. I do.</p> <p>16:34 3 Q. Just explain to me where on this work paper in</p> <p>16:34 4 your mind that transfer is demonstrated or described?</p> <p>16:34 5 MS. WOODRUFF: Objection. Vague and ambiguous</p> <p>16:34 6 as to "that transfer."</p> <p>16:34 7 THE WITNESS: At the bottom of the extended</p> <p>16:34 8 column you will see in all capital letters "Investment in</p> <p>16:34 9 SK Foods LLC, Investment in SK Foods Australia." To the</p> <p>16:34 10 right of those is an amount for SK Foods LLC, \$2,840,124.</p> <p>16:34 11 To the right of Investment in SK Foods</p> <p>16:35 12 Australia is the amount of 2,040,882.</p> <p>16:35 13 You'll note that there are circled number 1s</p> <p>16:35 14 next to those. Those are used to accumulate, and down</p> <p>16:35 15 below you will see an amount of \$4,881,006, and to the</p> <p>16:35 16 left of that it says "Less investment distributed to the</p> <p>16:35 17 partners." Okay?</p> <p>16:35 18 If you'll then go to SD000030, you will see on</p> <p>16:35 19 adjusting journal entry number 35 in the credit column a</p> <p>16:35 20 4,881,006 amount taking off the investment in SK Foods</p> <p>16:35 21 Australia as one line item for that amount, and debiting</p> <p>16:35 22 the two capital accounts, one for S. Salyer revocable</p> <p>16:36 23 trust, and the other capital account of SKPM Corp with a</p> <p>16:36 24 description to distribute partnership interests.</p> <p>16:36 25 Q. Okay. Do you know who prepared, I believe you</p>
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<p>16:33 1 THE WITNESS: Correct.</p> <p>16:33 2 BY MR. DREHER:</p> <p>16:33 3 Q. Okay. Specifically referring -- well, let me</p> <p>16:33 4 ask you this before I ask you any further questions about</p> <p>16:33 5 SD000030.</p> <p>16:33 6 Is there any other work paper that you can</p> <p>16:33 7 identify that also reflects or supports that transfer?</p> <p>16:33 8 A. SD000027.</p> <p>16:33 9 MS. WOODRUFF: Which, for the record, was</p> <p>16:33 10 previously marked as...</p> <p>16:33 11 THE WITNESS: Exhibit 69.</p> <p>16:33 12 MS. WOODRUFF: Correct.</p> <p>16:33 13 BY MR. DREHER:</p> <p>16:33 14 Q. Are there any other documents that are work</p> <p>16:33 15 papers that in your mind support or evidence that</p> <p>16:34 16 transfer?</p> <p>16:34 17 A. Well, there may be but these two adequately</p> <p>16:34 18 support it in my mind.</p> <p>16:34 19 Q. Looking at what's been marked as Exhibit 27,</p> <p>16:34 20 which is --</p> <p>16:34 21 MR. NICHOLSON: I think it's actually marked</p> <p>16:34 22 Exhibit 69. It's Document 27.</p> <p>16:34 23 MR. DREHER: You're correct.</p> <p>16:34 24 BY MR. DREHER:</p> <p>16:34 25 Q. Exhibit 69, do you have that in front of you,</p>	<p>16:36 1 were already asked this question on SD 69, but going back</p> <p>16:36 2 and asking you about SD000030, do you know who prepared</p> <p>16:36 3 that work paper?</p> <p>16:36 4 A. I cannot tell you who prepared it.</p> <p>16:36 5 Q. Okay. Sorry to jump around. Jumping back to</p> <p>16:36 6 SD 69 on the top left, at least on my copy, there's what</p> <p>16:36 7 appears to be the stamped letters PBC. Do you see that?</p> <p>16:36 8 A. I do.</p> <p>16:36 9 Q. What do you think that means?</p> <p>16:36 10 A. Are you asking me to speculate?</p> <p>16:36 11 MR. NICHOLSON: Objection. Calls for</p> <p>16:36 12 speculation.</p> <p>16:36 13 THE WITNESS: I would assume and guess that it</p> <p>16:36 14 means Prepared By Client.</p> <p>16:36 15 BY MR. DREHER:</p> <p>16:36 16 Q. Why would you make that assumption?</p> <p>16:36 17 A. Because that's the same initials we put on when</p> <p>16:36 18 a document is prepared by a client during our audits.</p> <p>16:36 19 Q. Do you believe that Exhibit 69 is something</p> <p>16:36 20 that was prepared by SK Foods?</p> <p>16:37 21 A. I have no idea who prepared it.</p> <p>16:37 22 Q. Does your firm, or I guess if you know, Moss</p> <p>16:37 23 Adams, but is it typical when an accounting firm is</p> <p>16:37 24 auditing the financial statements of a company or a</p> <p>16:37 25 business organization, is it typical for the accounting</p>

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<p>16:37 1 firm or for the client to prepare adjusting journal</p> <p>16:37 2 entries?</p> <p>16:37 3 MR. NICHOLSON: Objection. Improper lay</p> <p>16:37 4 opinion.</p> <p>16:37 5 THE WITNESS: It's not typical either way.</p> <p>16:37 6 BY MR. DREHER:</p> <p>16:37 7 Q. Okay. Could be either?</p> <p>16:37 8 A. Could be either.</p> <p>16:37 9 Q. In your experience?</p> <p>16:37 10 A. Correct.</p> <p>16:37 11 MR. DREHER: I don't have any other questions.</p> <p>16:37 12 MR. CHRISTMAS: Just a couple of questions.</p> <p>16:37 13 FURTHER EXAMINATION BY MR. CHRISTMAS</p> <p>16:37 14 Q. In the Stoughton Davidson audit file do you</p> <p>16:37 15 know if there are work papers supporting the intercompany</p> <p>16:38 16 loan balance that's shown in the financial statements</p> <p>16:38 17 prepared by Stoughton Davidson?</p> <p>16:38 18 MR. NICHOLSON: Objection. Vague and</p> <p>16:38 19 ambiguous.</p> <p>16:38 20 MS. WOODRUFF: Which exhibit are you referring</p> <p>16:38 21 to?</p> <p>16:38 22 MR. CHRISTMAS: I'm just asking him about the</p> <p>16:38 23 financial statements, without directing him to them.</p> <p>16:38 24 THE WITNESS: I believe your Exhibit 38 is</p> <p>16:38 25 responsive to that question.</p>	<p>16:39 1 BY MR. CHRISTMAS:</p> <p>16:39 2 Q. Are you aware whether or not there were any</p> <p>16:39 3 adjusting journal entries necessary in the year-end</p> <p>16:39 4 June 30, 2008 to give effect of that transaction that</p> <p>16:40 5 were not posted in the prior year?</p> <p>16:40 6 MR. NICHOLSON: Objection. Improper lay</p> <p>16:40 7 opinion.</p> <p>16:40 8 BY MR. CHRISTMAS:</p> <p>16:40 9 Q. I'm asking for the fact of that. Do you know</p> <p>16:40 10 if there were?</p> <p>16:40 11 A. I don't believe there were any journal entries</p> <p>16:40 12 posted for that note or the investments which had already</p> <p>16:40 13 been distributed.</p> <p>16:40 14 Q. And you're basing that understanding on what?</p> <p>16:40 15 A. The fact that the note balance, 18,262,000</p> <p>16:40 16 stayed the same. There was no change in that number.</p> <p>16:40 17 And the other investments had already been cleared off</p> <p>16:40 18 the books.</p> <p>16:40 19 Q. Do you know if the client had to address any</p> <p>16:40 20 adjusting journal entries in its books to give effect to</p> <p>16:40 21 that distribution of the equity?</p> <p>16:40 22 MS. WOODRUFF: Objection. Calls for</p> <p>16:40 23 speculation, lacks foundation.</p> <p>16:40 24 THE WITNESS: Not during the 6/30/2008 audit,</p> <p>16:40 25 no. I don't believe were anything -- I believe that was</p>
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<p>16:38 1 BY MR. CHRISTMAS:</p> <p>16:38 2 Q. And does Exhibit 38 indicate what underlying</p> <p>16:38 3 documents were reviewed by Stoughton Davidson to verify</p> <p>16:38 4 the intercompany loan balance?</p> <p>16:38 5 MR. NICHOLSON: Objection. Document speaks for</p> <p>16:38 6 itself.</p> <p>16:38 7 THE WITNESS: Which I would agree with</p> <p>16:38 8 Mr. Nicholson's comment.</p> <p>16:38 9 BY MR. CHRISTMAS:</p> <p>16:39 10 Q. I'm just asking what you know.</p> <p>16:39 11 A. It's in the legend as to what was done to</p> <p>16:39 12 satisfy him that that was a valid number, the tick mark</p> <p>16:39 13 legend.</p> <p>16:39 14 Q. Do you know if any procedures were followed by</p> <p>16:39 15 Stoughton Davidson in creating the financial statements</p> <p>16:39 16 for June 30, 2008, to give effect to the alleged</p> <p>16:39 17 distribution of equity to the partners of the Australian</p> <p>16:39 18 and New Zealand entities?</p> <p>16:39 19 MR. NICHOLSON: Objection. Vague and</p> <p>16:39 20 ambiguous.</p> <p>16:39 21 THE WITNESS: The answer is I would understand</p> <p>16:39 22 it was that transaction took place before this year, and</p> <p>16:39 23 therefore would not have any impact to these audit</p> <p>16:39 24 financial statements.</p> <p>16:39 25 ///</p>	<p>16:40 1 all done prior.</p> <p>16:40 2 BY MR. CHRISTMAS:</p> <p>16:40 3 Q. But your question implies that you know from</p> <p>16:41 4 having worked on the audit, and I thought you had no</p> <p>16:41 5 involvement in the audit?</p> <p>16:41 6 MR. NICHOLSON: Objection. Misstates his</p> <p>16:41 7 testimony.</p> <p>16:41 8 THE WITNESS: My testimony relates to my review</p> <p>16:41 9 of these documents, such as this one you provided me</p> <p>16:41 10 today, showing no entries made to that account.</p> <p>16:41 11 BY MR. CHRISTMAS:</p> <p>16:41 12 Q. But your knowledge of that is only based on the</p> <p>16:41 13 document production. Is that correct?</p> <p>16:41 14 A. That's correct. I did not work on the audit.</p> <p>16:41 15 Q. Right, and you did not look at the audit file</p> <p>16:41 16 to prepare for this examination?</p> <p>16:41 17 A. I did not.</p> <p>16:41 18 MS. WOODRUFF: Sorry, I'm going to object on</p> <p>16:41 19 that that it misstates the testimony, because the witness</p> <p>16:41 20 testified that he prepared for this deposition by</p> <p>16:41 21 reviewing documents and talking to Ms. Garone.</p> <p>16:41 22 MR. CHRISTMAS: Well, the testimony speaks for</p> <p>16:41 23 itself. I think that mischaracterizes it as well.</p> <p>16:42 24 Nothing.</p> <p>16:42 25 MR. NICHOLSON: I just have a couple questions.</p>

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<p style="text-align: right;">Page 74</p> <p>16:42 1 EXAMINATION BY MR. NICHOLSON</p> <p>16:42 2 Q. Mr. Dye, if I can refer you all the way back to</p> <p>16:42 3 Exhibit 1, which it starts with a Notice of Deposition</p> <p>16:42 4 heading, and I apologize there are no Bates-stamped pages</p> <p>16:42 5 on this exhibit, but if you flip back to what is page --</p> <p>16:42 6 starts at page 6 and overlaps onto page 7 of the combined</p> <p>16:42 7 designation of matters for testimony pursuant to Federal</p> <p>16:42 8 Rules Procedure 30(b)(6).</p> <p>16:42 9 Did you have occasion to read these categories</p> <p>16:42 10 during one of the breaks today?</p> <p>16:42 11 A. Yes, I did.</p> <p>16:42 12 Q. Do you believe that you are the person most</p> <p>16:42 13 knowledgeable at Stoughton Davidson to testify about the</p> <p>16:42 14 categories listed here?</p> <p>16:42 15 A. I believe there is no one in the firm that has</p> <p>16:42 16 any more knowledge than I have transferred to the parties</p> <p>16:43 17 asking questions today than I do.</p> <p>16:43 18 Q. And just to be clear, I'm referring to all</p> <p>16:43 19 matters for examination between paragraphs -- starts with</p> <p>16:43 20 number 1 and goes all the way down to 13 on page 7.</p> <p>16:43 21 If I understood your testimony, you believe you</p> <p>16:43 22 are the person most knowledgeable at Stoughton Davidson</p> <p>16:43 23 regarding these matters?</p> <p>16:43 24 A. Yes.</p> <p>16:43 25 MR. NICHOLSON: No further questions.</p>	<p style="text-align: right;">Page 76</p> <p>1 STATE OF CALIFORNIA)</p> <p>)</p> <p>2 COUNTY OF FRESNO)</p> <p>3</p> <p>4 I, AMANDA SCOTT, Certified Shorthand Reporter</p> <p>5 licensed in the State of California, License No. 13226,</p> <p>6 do hereby certify that the foregoing proceedings was</p> <p>7 reported by me and was thereafter transcribed under my</p> <p>8 direction into typewriting; that the foregoing is a full,</p> <p>9 complete and true record of said proceeding.</p> <p>10 I further certify that I am not of counsel or</p> <p>11 attorney for either or any of the parties in the</p> <p>12 foregoing proceeding and caption named, or in any way</p> <p>13 interested in the outcome of the cause named in said</p> <p>14 caption.</p> <p>15 In witness whereof, I have hereunto set my hand</p> <p>16 and affixed my seal this day.</p> <p>17 Date: August 25, 2011</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 AMANDA SCOTT, CSR #13226</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 75</p> <p>1 (The deposition of SCOTT DYE was concluded at</p> <p>2 4:43 p.m.)</p> <p>3</p> <p>4</p> <p>5 ---oOo---</p> <p>6 I declare under penalty of perjury under the</p> <p>7 laws of the State of California that the foregoing is</p> <p>8 true and correct.</p> <p>8 Executed at , California on ,</p> <p>2011.</p> <p>9</p> <p>10</p> <p style="text-align: center;">SCOTT DYE</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

20 (Pages 74 to 76)

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EXHIBIT 12

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:
SK FOODS, L.P., a California)
limited partnership, et al.,)
)
Debtors,) No. 09-29162-D-11
)
In re:)
) No. 09-29161-D-11
RHM INDUSTRIAL/SPECIALTY)
FOODS, INC., a California)
Corporation, d/b/a Colusa)
County Canning Co.,)
)
Debtor.)

Deposition of
WAYNE W. BOOS, CPA
Monday, June 22, 2009

THE SOUZA GROUP
Certified Shorthand Reporters
4615 First Street, Suite 200
Pleasanton, California 94566

Reported by:
KAREN SCOTT, CRP, CSR
LICENSE NO. 4027

1 No. 5 Document entitled "Declaration 90
2 of Cary S. Collins in Support
3 of Opposition of SSC Farming,
4 LLC, SSC Farms I, LLC, and SSC
5 Farms II, LLC to Chapter 11
6 Trustee's Motion for Order
7 Determining that Wastewater
8 Discharge Agreements with
9 Related Parties Constitute
10 'Executory Contracts' for
11 Purposes of 11 USC Section
12 365."
13
14
15
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Page 3

1	I N D E X		
2			
3	DEPOSITION OF WAYNE W. BOOS, CPA		
4	Monday, June 22, 2009		
5			
6	EXAMINATION BY:	Page	
7	MR. BROSNAHAN	8	
8	MR. HART	92	
9			
10	E X H I B I T S		
11	Exhibit	Description	Page
12	No. 1	Document entitled "Attachment	13
13		A"	
14	No. 2	Salyer Enterprises	56
15		organizational chart	
16	No. 3	Document entitled	60
17		"Consolidated Farming	
18		Operations SS Farms, LLC/SSC	
19		Farming/SSC 1 Farming/SSC 2	
20		Farming Financial Statements	
21		For The Six Months Ending June	
22		30, 2008."	
23	No. 4	E-mail chain, top one dated	64
24		Wed, May 23, 2007 at 1:56 PM	
25			

Page 2

1	QUESTIONS INSTRUCTED NOT TO ANSWER	
2	QUESTION	PAGE/LINE
3	Q Did you review any documents to	10/4
4	refresh your recollection regarding	
5	any matters pertinent to the	
6	deposition?	
7	Q Did you review any documents that	10/11
8	refreshed your recollection	
9	concerning the Salyer companies?	
10	Q Is that a fairly common structure	37/7
11	in the agricultural business?	
12	Q Are you aware of any accounting	50/13
13	rules that prohibit the practice	
14	that we just described where there	
15	is a loan from one company to	
16	another and no underlying loan	
17	document?	
18		
19		
20		
21		
22		
23		
24		
25		

Page 4

1 (Pages 1 to 4)

1 BE IT REMEMBERED THAT, pursuant to the laws
 2 pertaining to the taking and use of depositions, and
 3 on Monday, June 22, 2009, commencing at the hour of
 4 1:55 p.m. thereof, at the Law Offices of Kasowitz,
 5 Benson, Torres & Friedman LLP, A New York Limited
 6 Liability Partnership, 101 California Street,
 7 Suite 2050, San Francisco, California, before me,
 8 Karen Scott, a Certified Shorthand Reporter of the
 9 State of California, there personally appeared
 10 WAYNE W. BOOS, CPA,
 11 called as a witness by SS Farms, SSC Farming,
 12 SSC Farming I and SSC Farming II, who, being by me
 13 first duly sworn/affirmed, was thereupon examined and
 14 testified as is hereinafter set forth.

15 - - -
 16 LAW OFFICES OF KASOWITZ, BENSON, TORRES &
 17 FRIEDMAN LLP, A New York Limited Liability
 18 Partnership, 101 California Street, Suite 2050,
 19 San Francisco, California 94111, represented by
 20 BRIAN P. BROSNAHAN, ESQ., appeared as counsel on
 21 behalf of SS Farms, SSC Farming, SSC Farming I and SSC
 22 Farming II.

Page 5

1 LAW OFFICES OF SCHNADER HARRISON SEGAL &
 2 LEWIS LLP, One Montgomery Street, Suite 2200,
 3 San Francisco, California 94104, represented by
 4 CHRISTOPHER H. HART, ESQ., appeared as counsel on
 5 behalf of Bradley D. Sharp, Chapter 11 Trustee.

6
 7 LAW OFFICES OF SEGAL & KIRBY, 770 L Street,
 8 Suite 1440, Sacramento, California 95814, represented
 9 by MALCOLM SEGAL, ESQ., appeared via telephone as
 10 counsel on behalf of Scott Salyer.

11
 12 MURPHY PEARSON BRADLEY & FEENEY, A
 13 Professional Corporation, 88 Kearny Street,
 14 10th Floor, San Francisco, California 94108,
 15 represented by VINCENT O'GARA, ESQ., appeared as
 16 counsel on behalf of the witness, Wayne W. Boos, CPA.

17
 18 Also present: Jacob N. Foster, Esq.;
 19 Alan Dias, Videographer, The Souza Group.

Page 6

P R O C E E D I N G S

-oOo-

3 THE VIDEOGRAPHER: Good afternoon. We are
 4 on the video record at 1:55 p.m. I am Alan Dias from
 5 The Souza Group, San Francisco, California. The phone
 6 number is (415) 433-1234.

7 This is a matter pending before the
 8 United States Bankruptcy Court, Eastern District of
 9 California, Sacramento Division, case
 10 number 09-29162-D11 and case number 09-29161-D11.

11 Today's date is June 22nd, 2009. We are
 12 located at 101 California Street in the City of
 13 San Francisco, California.

14 Counsel, would you please identify
 15 yourselves, starting with the questioning attorney.

16 MR. BROSNAHAN: I am Brian Brosnahan of
 17 Kasowitz, Benson, Torres & Friedman, representing SSC
 18 Farming, LLC, SSC Farms I, LLC, and SSC Farms II, LLC.

19 MR. O'GARA: Vince O'Gara representing
 20 Mr. Boos, the witness.

21 MR. HART: Christopher Hart of Schnader
 22 Harrison Segal & Lewis, on behalf of Brad Sharp,
 23 Chapter 11 Trustee.

24 MR. FOSTER: Jacob Foster of Kasowitz,
 25 Benson, Torres & Friedman, on behalf of the SSC Farms

Page 7

1 entities.

2 MR. BROSNAHAN: And Malcolm?

3 MR. SEGAL: Malcolm Segal on behalf of Scott
 4 Salyer.

5 THE VIDEOGRAPHER: Will the court reporter
 6 please swear in the witness.

7 WAYNE W. BOOS, CPA,
 8 having been duly sworn/affirmed, testified as follows:

-oOo-

E X A M I N A T I O N

BY MR. BROSNAHAN:

12 Q Would you please state your full name and
 13 address for the record?

14 A **Wayne William Boos. 5260 North Palm Avenue,**
 15 **Suite 120, Fresno, California 93704.**

16 Q Thank you, Mr. Boos. Have you ever had your
 17 deposition taken before?

18 A **Yes.**

19 Q About how many times?

20 A **Once.**

21 Q Was that a long time ago?

22 A **It was in December.**

23 Q Not so long.

24 A **Not too long ago.**

25 Q I will give you a few of the ground rules

Page 8

2 (Pages 5 to 8)

1 even though your counsel has probably reviewed that
2 with you.

3 Most importantly, although we are in an
4 informal setting here in this conference room, your
5 testimony here today has the same force and effect as
6 if you were testifying in a court of law, and for that
7 reason it's very important that you understand the
8 questions that I ask you before you answer that.

9 So if I ask a question that you do not
10 understand, would you please ask me to reframe it or
11 restate it?

12 **A Yes.**

13 Q At the conclusion of the deposition, you
14 will be given a transcript to review and make any
15 corrections that you might feel are necessary, but any
16 party to the case could comment on any changes that
17 you make, and for that reason it's important that you
18 do your best to state your testimony completely and
19 accurately here this afternoon.

20 Do you understand?

21 **A Yes.**

22 Q Any questions about the process?

23 **A No.**

24 Q Okay. You are represented by counsel here
25 today?

Page 9

1 **A Yes.**

2 Q And that would be Mr. O'Gara?

3 **A Yes.**

4 Q Did you review any documents to refresh your
5 recollection regarding any matters pertinent to the
6 deposition?

7 MR. O'GARA: I'm going to object to the
8 extent it calls for documents reviewed exclusively in
9 the presence of his counsel.

10 BY MR. BROSNAHAN:

11 Q Did you review any documents that refreshed
12 your recollection concerning the Salyer companies?

13 MR. O'GARA: Same objection.

14 MR. BROSNAHAN: I think, Counsel, if the
15 documents reviewed his -- refreshed his recollection,
16 then he is permitted to testify about the documents,
17 notwithstanding any privilege.

18 MR. O'GARA: Yes, he can testify about the
19 documents, but he is not going to give you a list of
20 documents reviewed with counsel. If you'd like to ask
21 him specific questions about documents, please do.

22 MR. BROSNAHAN: Perhaps we'll return to the
23 subject.

24 Q About how long did you spend preparing for
25 your deposition?

Page 10

1 **A I received notice on Friday afternoon, so
2 not long.**

3 Q Can you tell me about how many hours?

4 **A I met with counsel, you know, an hour
5 earlier. Briefly went over the -- preparing on Friday
6 when I got out of my meeting, you know, at 5:00. A
7 little bit on Saturday. So about three hours maybe.**

8 Q Thank you. Have you had any conversations
9 with either the Chapter 11 trustee or his counsel
10 concerning the bankruptcy proceedings?

11 **A Regarding the bankruptcy proceedings?**

12 Q Yes.

13 **A Not the trustee himself. I spoke with Kyle.**

14 Q Who is Kyle?

15 **A Kyle is with DSI. Is that the right name?**

16 Q DSI?

17 **A DSI.**

18 Q And what do you understand Kyle's role to
19 be?

20 **A He works with the trustee.**

21 Q And what did you speak to him about?

22 **A The appointment of our firm for tax work in
23 bankruptcy for SK Foods.**

24 Q Has your firm been appointed for tax work
25 for SK Foods in the bankruptcy?

Page 11

1 **A It has not yet.**

2 Q Did you speak with anyone else who
3 represented the trustee regarding the bankruptcy?

4 **A No. I believe that Kevin did call but did
5 not speak with me.**

6 Q Kevin Coleman?

7 **A Yes.**

8 Q You haven't spoken with anyone from
9 Mr. Coleman's law firm?

10 **A Correct.**

11 Q Did you do any search for documents in
12 preparation for your deposition?

13 **A Yes.**

14 Q And what did you do to search for documents?

15 **A I went through -- my understanding, this was
16 limited to the wastewater for the various entities,
17 the SSC, SSCI and II entities.**

18 **So in connection with that, I instructed
19 someone in our office to assist on going through the
20 work papers that we had and then, with regards to
21 e-mails, searched with the term wastewater.**

22 Q Did you find any documents?

23 **A Yes.**

24 Q Did you bring any documents with you today?

25 **A No.**

Page 12

3 (Pages 9 to 12)

1 Q Why not?

2 I know you had a brief discussion with
3 Mr. Putterman off the record.

4 Did you reach any agreement with him or are
5 you taking the position that no documents need to be
6 produced or -- I am trying to short circuit the
7 inquiry.

8 MR. O'GARA: I got some documents by e-mail
9 about 35 minutes ago, and I haven't had a chance to
10 review them nor have I been able to print them out on
11 my computer. They were sent to me by e-mail. So
12 until I have had a chance to review them, we can't
13 produce anything.

14 MR. BROSNAHAN: Okay. I understand. We
15 would hope to be able to work out production of the
16 documents. We understand it's been a very short time
17 schedule that's been a problem for all of us.

18 I will have the court reporter mark as
19 Exhibit 1 a document entitled "Attachment A," and then
20 it says "Definitions and General Instructions."

21 (Document referred to herein marked for
22 identification Exhibit No. 1)

23 BY MR. BROSNAHAN:

24 Q Mr. Boos, have you seen the document that's
25 marked as Exhibit 1 before?

Page 13

1 A Yes. I received it on Friday.

2 Q When you did the document search that you
3 described, were you looking for the documents listed
4 in Exhibit 1?

5 A Yes.

6 Q Were there any categories of documents in
7 Exhibit 1 that you were not looking for?

8 A That I was not looking for?

9 Q Yes.

10 A What do you mean?

11 Q In other words, did you exclude any of the
12 categories of documents from your search?

13 A No.

14 Q And did you provide your counsel with all of
15 the documents that you found that fell into any of the
16 categories listed on Exhibit 1?

17 A Yes. And as a clarification, when -- when
18 Mr. Goss in our office spoke, I believe, with
19 Mr. Putterman on Friday, it was agreed that it was
20 limited to issues relating to the wastewater
21 discharge. As an example, it says all documents that
22 refer to farm entities.

23 We have a vast number of tax return
24 documents that state their name in there, you know,
25 tens of thousands of pages, but we limit the scope on

Page 14

1 it to just those relating to wastewater issues.

2 Q Thank you. Could you briefly give us your
3 educational background, beginning with your graduation
4 from high school?

5 A I graduated from high school in 1981,
6 received my bachelor's degree in business
7 administration with an option in accounting from
8 California State University, Fresno, in May of 1985,
9 and received my master's in accounting from Cal State
10 Fresno in May of 1986.

11 Q Are you a CPA?

12 A Yes, I am.

13 Q When did you become certified as a CPA?

14 A I became certified in 1988.

15 Q Could you briefly give us your employment
16 history?

17 A After graduating from college, I went to go
18 work with Ernst & Whinney, subsequently becoming Ernst
19 & Young, in 1986, and continued with them until 1994,
20 when the Fresno office of Ernst & Young was merged
21 into the Fresno office of Deloitte & Touche.

22 I was with Deloitte & Touche until February
23 of 2004, at which time I was a tax director with the
24 firm. At that time I left Deloitte and started my own
25 practice, Boos & Associates. I have been operating

Page 15

1 that ever since.

2 Q Is that a sole proprietorship?

3 A Yes.

4 Q What year did you start Boos & Associates?

5 A 2004.

6 Q You have done work for companies associated
7 with Scott Salyer before, correct?

8 A Correct.

9 Q When did you first start working for
10 Mr. Salyer or a company associated with him?

11 A In 1997.

12 Q So that was while you were at --

13 A Deloitte.

14 Q -- Deloitte?

15 Can you tell us how that work came about?

16 A It was a referral from an associate that I
17 had that was doing some consulting work for SK Foods
18 at the time.

19 Q Who is that?

20 A Tom Jackson.

21 Q What was the nature of the work that you
22 started doing for either Mr. Salyer or companies
23 associated with him beginning in '97?

24 A We -- we were working on the audit and tax
25 return work, and my role was in the tax department, so

Page 16

4 (Pages 13 to 16)

1 **it was limited to that aspect.**

2 Q What kind of audit are you referring to?

3 **A The financial statement audit. Deloitte did**
4 **that for SK Foods.**

5 Q Have you -- well -- so that was SK Foods
6 that you were doing the tax work for?

7 **A I was doing the tax work for SK Foods, Scott**
8 **Salyer, SS Farms, and maybe a few other ones back**
9 **then, but those were the primary ones.**

10 Q So that would be SK Foods, SS Farms,
11 Mr. Salyer personally?

12 **A Uh-huh. And Blackstone Ranch.**

13 Q Uh-huh. Have you continued to do work for
14 Mr. Salyer or companies associated with him
15 continuously since 1997?

16 **A Yes.**

17 Q And has the number of companies that you've
18 done work on expanded over that time?

19 **A Yes.**

20 Q And can you tell me what other companies
21 associated with Mr. Salyer you have done work for?

22 **A SSC Farming, SSC Farming I, SSC Farming II,**
23 **SSC Farming III, SARS, LLC, CSSS, L.P.**

24 Q Can you --

25 **A CSS --**

Page 17

1 Mr. Salyer that you are aware of that you do not do
2 the tax work for?

3 **A I don't believe so.**

4 Q Is there a particular name that you use to
5 describe the group of companies that consists of
6 SS Farms, SSC Farming and then the SSC Farms I, II and
7 III entities?

8 **A Farming entities?**

9 Q Or farming companies.

10 **A Farming companies.**

11 Q So if we use either of those terms in the
12 deposition, that's what we will be speaking of; okay?

13 **A Yes. And the other -- I do work also for**
14 **Salyer American Fresh Foods and that group of**
15 **entities, but I would separate that from the SSC**
16 **Farming entities. It's sort of managed differently.**

17 Q When did you start doing work for Salyer
18 American Fresh Foods?

19 **A In 2007, when Scott acquired the shares from**
20 **his father and sister.**

21 Q Do you know Shondale Seymour?

22 **A Yes.**

23 Q How did you come to know her?

24 **A I worked with Shondale initially at Ernst &**
25 **Whinney.**

Page 19

1 Q Can we go back to the one before that?

2 **A SARS. It's S-A-R-S.**

3 Q As in the disease?

4 **A Yeah. I don't know if that's how you spell**
5 **it, but that's the initials.**

6 **I have done work with regards to the foreign**
7 **operations in both New Zealand and Australia, and**
8 **there is multiple entities there, as well as**
9 **Mr. Salyer and his daughter's trust and their personal**
10 **returns. Altogether about 30 some entities and tax**
11 **paying.**

12 Q When did you first start doing work on the
13 SSC books?

14 **A The tax return?**

15 Q Yes.

16 **A I believe that was organized as an LLC -- I**
17 **believe it was organized around 1999 or 2000,**
18 **someplace around then.**

19 Q And did you begin working on SSC matters as
20 soon as it became organized?

21 **A Yes.**

22 Q Is that also true of SSC Farms I, II and
23 III?

24 **A Yes.**

25 Q Are there any companies associated with

Page 18

1 Q Have you worked with her since she came on
2 board with the various Salyer companies?

3 **A Yes.**

4 Q Could you describe how you have interfaced
5 with her since she's been working at the Salyer
6 companies?

7 **A She is the CFO.**

8 **(Interruption.)**

9 MR. BROSNAHAN: We can try, but I don't know
10 that it will work.

11 We have moved the phone as close as we can,
12 so hopefully you can hear better now.

13 MR. SEGAL: Thank you.

14 BY MR. BROSNAHAN:

15 Q Let's see. We were talking about

16 Ms. Seymour. What's the working relationship like in
17 terms of your interfacing with her?

18 **A Well, she is the CFO for SK Foods and then**
19 **had -- and also Salyer American Fresh Foods, including**
20 **all the entities. So she was a key contact for us**
21 **from doing tax work.**

22 Q Have you -- well, has she ever worked for
23 Boos & Associates?

24 **A Yes.**

25 Q When did she work for Boos & Associates?

Page 20

5 (Pages 17 to 20)

1 A April of 2007 through December of 2007.

2 Q Was she full time at that point?

3 A Yes.

4 Q Has --

5 A She worked extensively on SK Foods, though,
6 at that time.

7 Q Has she done any work for Boos & Associates
8 since December of 2007?

9 A No. Actually in January of 2008. No, she
10 hasn't.

11 Q Has she received any compensation from Boos
12 & Associates since January 2008?

13 A The only thing I think she received
14 subsequent was a PTO payout of her PTO accrual, but
15 not anything for additional work.

16 Q Could you please describe the services that
17 you perform for the farming companies? And maybe we
18 should back up a second.

19 You have talked about doing tax work. Are
20 there people in Boos & Associates who do work other
21 than tax work?

22 A Yes.

23 Q Why don't you describe all the types of work
24 that Boos & Associates does for the farming entities.

25 A For the farming entities?

Page 21

1 Q Yes. We can expand to cover all the other
2 entities.

3 A We have done, obviously, the tax work, and
4 we have done accounting assistance work in the past
5 for those entities.

6 Q What do you mean by "accounting assistance"?

7 A Assisting the company in preparing their
8 general ledger and recording accounting transactions
9 as an outsource accounting assistance.

10 Q During what period of time did Boos &
11 Associates provide accounting assistance to the
12 farming entities?

13 A Well, during -- when Shondale was with the
14 firm, which was, you know, the April of '07 through
15 January of '08 period, and during that time we had
16 another individual by the name of Gary Shimmin, who is
17 in our accounting and audit department, work with her
18 for about two months to try to get the records up to
19 date.

20 Q Since Ms. Seymour left Boos & Associates,
21 have you done any accounting assistance work for the
22 farming entities?

23 A We had a staff person that has helped her
24 since she left, although I'm not -- I don't think she
25 worked on the farming entities. She was mainly

Page 22

1 working on the SK Foods and Salyer American.

2 Q Who was that person?

3 A Deborah Blayney.

4 Q Do you have an employee named Gene Kezirian?

5 A No, I don't. I saw that. He's not an
6 employee.

7 Q Okay. Was he a consultant or did he do any
8 work for Boos & Associates?

9 A No. He -- he is an independent outside
10 consultant that works for SK, and then I think he is
11 now an employee of SK.

12 Q But he never had anything to do with your
13 firm?

14 A No.

15 Q And --

16 A He was hired by Mark McCormick in that role,
17 unrelated. We worked with him to get information and
18 worked on projects, but he was not an employee of
19 ours. Never has been.

20 Q Okay.

21 A And the same thing with Marshall Scott as
22 well.

23 Q Turning to other Salyer companies besides
24 the farming entities, you've already testified that
25 you do tax work for those entities, right?

Page 23

1 A Uh-huh.

2 Q Do you also do accounting assistance for any
3 of those firms?

4 A Deborah -- like I said, Deborah Blayney
5 worked on SK Foods and Salyer American Fresh Foods.

6 Q During what period of time?

7 A During April of 2007 until they filed
8 bankruptcy in May of '09.

9 Q And was she located physically on site at
10 SK Foods?

11 A Yes.

12 Q But she was a full-time employee of Boos &
13 Associates?

14 A Yes.

15 Q Do you know whether she did any work that
16 involved accounting in the general ledger system of
17 the farming entities?

18 A In the general ledger farming entities? I
19 don't know.

20 Q Are you familiar with the general ledger
21 system used by the Salyer companies?

22 A Yes, somewhat. The old system or the new
23 system?

24 Q Well, how about the old system?

25 A Uh-huh.

Page 24

6 (Pages 21 to 24)

1 Q When did they stop using the old system?
 2 A **They transferred over to -- sometime in**
 3 **early '08 to the DAX system.**
 4 Q You are familiar with both of those systems?
 5 A **Uh-huh. I have seen reports from it. I**
 6 **don't know how to use it, but I have seen them, yeah.**
 7 Q Are you familiar with the structure of the
 8 accounts in the general ledger system used by the
 9 Salyer companies?
 10 A **Yeah.**
 11 Q Does each of the companies have its own
 12 general ledger accounts?
 13 A **There is a separate general ledger for each**
 14 **company and they believe -- I believe they use**
 15 **consistent account GL codings. So the cash is always**
 16 **the same GL account in each of the entities, I**
 17 **believe. I am not sure.**
 18 Q So your understanding is that each of the
 19 companies has its own general ledger?
 20 A **That is true.**
 21 Q Are there other kinds of accounting records
 22 besides the general ledger system for which each of
 23 the Salyer companies has its own set of books?
 24 A **Well, they each have their own bank**
 25 **accounts. They each have their own, you know,**
 Page 25

1 **receivables, you know, subsidiary ledgers.**
 2 Q That's the general kind of thing I am
 3 looking for.
 4 A **Yeah.**
 5 Q Are there other kinds of accounting records
 6 that you can think of that are maintained separately
 7 by each of the Salyer companies?
 8 A **There are separate payroll. There are**
 9 **separate records for each entity.**
 10 Q Has that been true since you started working
 11 for the Salyer companies?
 12 A **Yes.**
 13 Q Have you been involved in preparing
 14 financial statements for any of the Salyer entities?
 15 A **No.**
 16 Q Have you ever reviewed any financial
 17 statements for any of the Salyer entities?
 18 MR. O'GARA: I'm going to object to the use
 19 of the word review because that has a very technical
 20 meaning in the accounting business. Do you mean in
 21 the technical or the more general sense?
 22 BY MR. BROSNAHAN:
 23 Q Why don't we use the more general sense.
 24 A **We have not performed any reviews. It's a**
 25 **lesser form of an audit, but I have glanced at them.**
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1 **The ones that have been audited -- the SK foods is the**
 2 **only one that's been audited.**
 3 Q Let's talk about audits. You were just
 4 referring to an audit of SK Foods. Was that a tax
 5 audit?
 6 A **No. Financial statement audit. Their**
 7 **auditors were Deloitte, Moss Adams, and Stoughton**
 8 **Davidson.**
 9 Q When was that audit?
 10 A **They were continuous since '97. Every year**
 11 **there was an audit. Previous to that they were**
 12 **audited by KPMG.**
 13 Q What's your understanding -- were you
 14 involved in that audit process at all, you or your
 15 firm?
 16 A **The only thing that we did was tax provision**
 17 **work for the audit, to book the tax accounts for --**
 18 **and it relates to the foreign entities.**
 19 Q What is tax provision work?
 20 A **It's recording in the GL the current and**
 21 **deferred tax liability as well as the current tax**
 22 **expense.**
 23 Q What's your understanding of the purpose of
 24 the financial statement audits that you have been
 25 referring to?

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1 A **The financial statements are for Mr. Salyer**
 2 **as well. For SK Foods, they were obviously provided**
 3 **to the banks.**
 4 Q Other than the series of audits that you
 5 described for SK Foods, are you aware of any other
 6 audits that have been done on any of the Salyer
 7 entities?
 8 A **Financial statement audits?**
 9 Q Any kind of audits.
 10 A **Well, there is IRS audit. Does that fall**
 11 **under your question?**
 12 Q Yes, it does.
 13 A **SSC Farm -- SSC Farming was under audit.**
 14 **Blackstone Farm -- Blackstone Ranch was under audit,**
 15 **that I worked on, and Mr. Salyer's returns were under**
 16 **audit. SK Foods was under audit. These are all IRS**
 17 **exam audits or Franchise Tax Board exam audits.**
 18 Q And the audits that -- the tax audits that
 19 you just referred to, were they on a onetime basis or
 20 were they recurring for some period?
 21 A **They were on a onetime and they may have**
 22 **recurred over time, but they were for a set period.**
 23 **Normally it's a one- or two-year period that gets**
 24 **audited by the IRS or Franchise Tax Board.**
 25 Q Do you recall what the period of the audit

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7 (Pages 25 to 28)

1 was for the SSC Farming audit?
 2 **A It was 2004 and 2005.**
 3 Q How about Blackstone Ranch?
 4 **A Blackstone Ranch was when I was at Deloitte.**
 5 **It could have been in the late '90s or early 2000s.**
 6 Q How about SK Foods?
 7 **A SK Foods was when I was at Deloitte. So it**
 8 **was in the '90s -- actually, SK Foods was probably**
 9 **audited a couple times. '90s and 2000s. And then**
 10 **actually in the recent last year, year and a half,**
 11 **SK Foods was brought into audit because of another**
 12 **related entity, SKPM, which was under audit about a**
 13 **year ago.**
 14 Q When you say you forgot to mention, you mean
 15 SKPM is another Salyer-connected company that you have
 16 done work for?
 17 **A Yes. And also under IRS audit.**
 18 Q So SK Foods and SKPM are under IRS audit
 19 now?
 20 **A No.**
 21 Q No?
 22 **A The audit has been closed. The only ones**
 23 **that are outstanding is SSC Farming. It's in appeals.**
 24 Q And that appeal relates to the '04-05 time
 25 period?

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1 **A Correct.**
 2 Q Did you personally participate in the audits
 3 that you just described, the tax audits?
 4 **A Yes.**
 5 Q Are you aware of any audits that have been
 6 done of any of the Salyer entities by accountants
 7 brought in by any lenders?
 8 **A I know that they have gone through a review**
 9 **process. I am not that familiar, though, with what**
 10 **they have done or what entities it relates to.**
 11 Q Have you had any dealings with Alvarez &
 12 Marsal?
 13 **A No.**
 14 Q How about FTI?
 15 **A No.**
 16 Q Have you had any dealings with any other
 17 accounting firms that you understood to have been
 18 appointed by any lenders?
 19 **A No. Oh, I take that back. By -- in 2007**
 20 **the -- what's the name of the firm? There was another**
 21 **consulting firm brought in that worked with Glen**
 22 **McClaran. Glen McClaran was there as a CFO. I did**
 23 **meet with them.**
 24 Q Do you -- you understood that they were
 25 brought in by one of the lenders?

Page 30

1 **A Uh-huh.**
 2 Q Do you know what company they were
 3 reviewing?
 4 **A SK Foods. And they could have been**
 5 **reviewing other entities too. It was a brief meeting**
 6 **just to kind of explain an overview of the company**
 7 **structure.**
 8 Q Have you ever prepared any organization
 9 charts of the Salyer companies structure?
 10 **A I haven't, but our office has.**
 11 Q Have you ever reviewed one?
 12 **A Yes.**
 13 Q Do you know who in your office prepared
 14 that?
 15 **A Ana Silva.**
 16 Q Do you know when it was prepared?
 17 **A It was prepared probably a couple years ago**
 18 **and then updated for changes since then.**
 19 Q Do you have any particular process that you
 20 go through to update the organization chart?
 21 **A Usually when there is a new entity, we set**
 22 **up a client for each entity. We usually -- one of our**
 23 **managers would probably provide that information to**
 24 **Ana so that the organization chart could be updated,**
 25 **or if an entity liquidated, it could be deleted.**

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1 Q How about if there is a change in the
 2 ownership of an entity? Does that get --
 3 **A That would also be updated as well.**
 4 Q Do you know that -- you still maintain that
 5 chart?
 6 **A Well, it's been maintained through the**
 7 **beginning of this year. I don't know if it's current**
 8 **as of right now, but --**
 9 Q When you say "the beginning of this year,"
 10 could --
 11 **A 2009.**
 12 Q But what's your best estimate of when in
 13 2009 it was maintained through?
 14 **A Probably January or February 2009.**
 15 Q Is there any particular reason why it was
 16 not maintained after that point?
 17 **A At -- I don't know if there was any changes**
 18 **since then, and then once the company went into**
 19 **bankruptcy, we basically -- I --**
 20 Q I'm sorry.
 21 **A I'm not sure we have any additional**
 22 **information that's been changed since then.**
 23 Q Did you have any procedure to make sure that
 24 the chart was accurate during the period before
 25 January or February of 2009?

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8 (Pages 29 to 32)

1 **A It was reviewed by a senior manager in our**
2 **firm who oversees the SK Foods report.**

3 Q It was --

4 **A Reviewed --**

5 Q Right.

6 **A -- for correctness.**

7 Q You said something about oversees SK Foods
8 work?

9 **A Yes. The tax work.**

10 Q Uh-huh.

11 **A We have various people that work on the**
12 **Salyer/SK Foods tax return work.**

13 Q Do you know whether the organization chart
14 was regularly reviewed by anyone at any of the Salyer
15 companies?

16 **A Yes. It was used by them and reviewed by**
17 **them. By Shondale, by Mark.**

18 Q We'll try to bring the chart in in a few
19 minutes. I don't have it with me right now.

20 A few minutes ago you referred to
21 outsourcing of certain accounting functions. Were you
22 saying that during some period of time various Salyer
23 entities outsourced accounting functions and had your
24 firm perform services or functions that had previously
25 been performed in-house?

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1 **A Correct.**

2 Q Why was that work outsourced?

3 **A There was a turnover in accounting personnel**
4 **at SK and other entities, that they were behind, and**
5 **so we went in to assist them in getting their books**
6 **caught up.**

7 Q Now, had Ms. Seymour worked for any of the
8 Salyer entities before she came on board with you?

9 **A Yes.**

10 Q Was there any particular reason why she then
11 went to work for you during this outsourcing period?

12 **A She wanted to do work for other entities**
13 **other than just SK Foods. She wanted to get back into**
14 **public accounting.**

15 Q So she wasn't working full time on Salyer
16 companies during that period?

17 **A She was working full time on Salyer**
18 **companies prior to -- right immediately prior to**
19 **coming to work for us, she was, yes.**

20 Q While she was working for you, was she
21 working full time on Salyer companies?

22 **A Yes.**

23 Q So the reason that she went to work for you
24 was because she wanted to work for Salyer companies
25 other than SK Foods? Is that what you are saying?

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1 **A No. Other clients of ours other than Salyer**
2 **or SK Foods entities.**

3 Q Okay. Are you saying that didn't really
4 happen?

5 **A That didn't really happen. She was needed**
6 **at SK Foods, so she had no opportunity.**

7 Q What accounting functions was your office
8 handling during this outsourcing period?

9 **A We were doing, you know, the accounting for**
10 **SK Foods, Salyer American Fresh Foods, and some of the**
11 **farming entities were -- that was more of a limited**
12 **time period.**

13 Q Right. For the farming entities, it was
14 April of '07 through about January of '08?

15 **A No. That was Shondale's tenure with us, and**
16 **that was for SK Foods and Salyer American Fresh Foods.**
17 **The farming entities was done by Gary Shimmin in our**
18 **firm, and that was basically the summer of '07 for a**
19 **couple months. And then they had another -- a new**
20 **CFO, Chad Pinter or something like that, who took it**
21 **back in-house.**

22 Q During those couple of months in the summer
23 of '07, what accounting functions were outsourced by
24 the farming entities to your firm?

25 **A What accounting functions? He basically**

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1 **assisted with the company in preparing the --**
2 **recording the transactions and so that they could, you**
3 **know, produce their -- their books for the month,**
4 **close their books for the month.**

5 Q When you say "their books," you are
6 referring to general ledger?

7 **A Yes.**

8 Q So Mr. Shimmin was essentially involved in
9 booking all of the transactions during that period?

10 **A I don't know -- I don't think all. There**
11 **were some people at the company themselves, and I**
12 **wasn't directly involved with that process, so I can**
13 **tell you what I believe happened, but, you know, he**
14 **did receive documents from the company and then**
15 **recorded the transactions with the company's**
16 **assistance.**

17 Q Either during the period when the accounting
18 work was outsourced to your office or at any other
19 time, has your office provided input to any of the
20 Salyer companies in either setting up or improving
21 their accounting system?

22 **A Setting up their accounting systems?**

23 Q Yes, or improving those systems.

24 **A No, not really.**

25 Q Have you worked with any closely held

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1 companies before, putting aside the Salyer entities?

2 **A Yes.**

3 **Q** Have you worked with closely held companies
4 that had a corporate structure that involved multiple
5 related companies?

6 **A Yes.**

7 **Q** Is that a fairly common structure in the
8 agricultural business?

9 **MR. O'GARA:** I'm going to object to that
10 question because it asks for him to give an expert
11 opinion. He's here as a percipient witness, not an
12 expert.

13 **MR. BROSNAHAN:** Are you instructing him not
14 to answer the question?

15 **MR. O'GARA:** Yes, I am.

16 **BY MR. BROSNAHAN:**

17 **Q** Could you tell me approximately how much of
18 your work since you opened your own office has been
19 with closely held companies?

20 **A About 70 percent.**

21 **Q** And how much of that work involves companies
22 that have a corporate structure that entails multiple
23 related companies?

24 **A Obviously a big part of that 70 percent is**
25 **the SK and Salyer group. Other entities, other**

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1 **clients would be less than that amount, but it is**
2 **something that is seen.**

3 **Q** Of that 70 percent, about how much of that
4 is work for any of the Salyer companies?

5 **A About 50 percent.**

6 **Q** 50 percent of the 70 percent?

7 **A Uh-huh.**

8 **Q** So about 35 percent of all your work is for
9 the Salyer companies?

10 **A No. About 50 percent.**

11 **Q** Okay. 50 percent of all your work is --

12 **A Uh-huh.**

13 **Q** Okay. About how many closely held companies
14 have you done accounting work for?

15 **A Groups. A dozen.**

16 **Q** When you say "groups," you would count the
17 Salyer companies as one group?

18 **A Uh-huh.**

19 **Q** And have all of the companies that are
20 included in that dozen been companies that had
21 multiple related corporate entities?

22 **A No, not all.**

23 **Q** How many clients have you worked with that
24 were closely held companies that had a corporate
25 structure using multiple related companies?

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1 **A How many? I don't know off the top of my**
2 **head.**

3 **Q** Is it more than just the Salyer companies?

4 **A Yes.**

5 **Q** Is it most of the 12 that you've described
6 as closely held companies that you have done work for?

7 **MR. O'GARA:** That's been asked and answered.
8 He told you what his best recollection, which is he
9 doesn't know.

10 **BY MR. BROSNAHAN:**

11 **Q** Can you give me an estimate?

12 **A There are more than one or two. I mean, I**
13 **don't want to say it's 50 percent, but it's not**
14 **uncommon, I guess I could say.**

15 **Q** Of that dozen companies, how many of them
16 are involved in agriculture or processing agricultural
17 products?

18 **A Probably 50 percent.**

19 **Q** Now, in doing work for clients that involve
20 multiple related companies as part of their corporate
21 structure, have you been involved in accounting for
22 transactions between related companies?

23 **A No. Again, I'm a tax person, so that's**
24 **primarily what my involvement is.**

25 **Q** How many people are in your firm?

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1 **A Twenty.**

2 **Q** And are you the top man in the company?

3 **A I am the managing director.**

4 **Q** Does that mean that you are the boss?

5 **A I would hope so.**

6 **Q** Now, during the period of time when you had
7 employees doing the outsourced accounting for the
8 Salyer companies, who were those employees reporting
9 to?

10 **A Shondale was a director in our firm, so she**
11 **was -- she would use the staff or Mr. Shimmin, who was**
12 **a manager in our firm at that time.**

13 **Q** Did Shondale report to you?

14 **A She worked principally under SK Foods, but I**
15 **was aware of -- so she -- she -- I wasn't involved**
16 **directly in what she was working on out there because**
17 **she was a director. That was part -- it was her area**
18 **of expertise and so she was handling that area.**

19 **Q** Did she ever tell you what kinds of work she
20 was doing?

21 **A We spoke every once in a while. She pretty**
22 **much was independent.**

23 **Q** But ultimately she reported to you?

24 **A Yes.**

25 **Q** Could you describe the process that you go

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10 (Pages 37 to 40)

1 through in doing a tax audit for the Salyer companies?

2 **A A tax audit?**

3 **Q Yes.**

4 **MR. O'GARA:** I object to the question on the
5 grounds it misstates the record.

6 **BY MR. BROSNAHAN:**

7 **Q** I suppose you are not the one who is doing
8 the tax audit, but you have been involved in tax
9 audits for the Salyer companies, correct?

10 **A Yes.**

11 **Q** Let's back up.

12 Have you prepared the federal and state
13 taxes for the SSC Farming entities since those
14 entities were created?

15 **A Our firm has, yes. Or Deloitte has, yes.**

16 **Q** While you were at Deloitte, were you
17 involved in working on the farming companies' taxes?

18 **A Yes.**

19 **Q** Can you describe the process that you go
20 through to prepare those tax returns?

21 **A The process is that we normally would send**
22 **out a client-prepared schedule request, and then the**
23 **client would gather information and, you know, return**
24 **it to us in order for us to prepare the work papers,**
25 **and therefore the forms, and the tax return needs to**

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1 **be filed with the government agencies.**

2 **Q** Do the materials that the client provides to
3 you in connection with that tax work include any
4 information about related company payments?

5 **A It can if it's relevant for the return.**

6 **When I say relevant for the return, primarily the only**
7 **real issue is if there is accrual, accruals from an**
8 **accrual-basis entity to a cash-basis entity, there is**
9 **a deferral of that deduction under the tax code.**

10 **Q** Are some of the Salyer companies on an
11 accrual basis and others on a cash basis?

12 **A Yes.**

13 **Q** Can you tell me which ones -- which are
14 the -- what basis are the farming companies on?

15 **A SS Farms is on the accrual. The other ones**
16 **are on a cash. The farming entities, SSC Farming, SSC**
17 **Farming I and II and Blackstone.**

18 **Q** On what basis is SK Foods?

19 **A Accrual.**

20 **Q** So if there are transactions between, let's
21 say, SSC Farming and SK Foods, they would be on a --
22 those two companies have a different basis for their
23 taxes and you might have to make adjustments
24 addressing those transactions?

25 **A If SK Foods had accrued expenses that were**

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1 **not paid to SSC Farming, it was on the cash basis and**
2 **there could be a limitation on SK Foods' --**

3 **Q Ability?**

4 **A -- ability to deduct a current expense, yes.**

5 **There is no -- there is no opposite, though,**
6 **with an expense accrued by SSC to SK Foods. Because**
7 **it's on a cash basis, it gets reversed anyway.**

8 **Q** What do you mean by that it gets reversed?

9 **A Reversed under the accrual to cash**
10 **adjustment where we convert the accrual books for an**
11 **entity to cash basis for the tax return.**

12 **Q** Because the tax returns are filed on a cash
13 basis?

14 **A Cash basis, yes.**

15 **Q** Other than the need to make sure that any
16 accrued expenses that had not yet been paid for with
17 cash were not taken as deductions, were there other
18 kinds of situations where you would need to look at
19 intercompany payments for purposes of preparing the
20 taxes?

21 **A Not generally. I mean, you want to make**
22 **sure that the intercompany accounts balance between**
23 **all the entities.**

24 **Q** What do you mean by that?

25 **A That what is showing up on the client's**

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1 **books, the accrual basis books, what's showing up as a**
2 **receivable on one, as a payable to somebody else on**
3 **the other companies' books, it should show the**
4 **corresponding same amount as of that period of time,**
5 **because if not, then something's not consistently**
6 **reported.**

7 **Q** Did you ever run across that situation?

8 **A For doing the returns?**

9 **Q Yes.**

10 **A No, I haven't. I mean, again, I'm not the**
11 **detail person doing it, but I think for the most part**
12 **they were in balance, because at the time we do the**
13 **return, which, you know, could be six months after the**
14 **end of the year, you know, it's gone through a**
15 **companies' review and that's something that they**
16 **normally would do.**

17 **Q** Are you aware of any accounting rules or
18 conventions that were used by any of the Salyer
19 entities to account for intercompany payments?

20 **A Inter -- what do you mean?**

21 **Q** Well, was there a practice, for example, of
22 recording a transfer of money from one company to
23 another on the books of both of those companies?

24 **A Well, at the end of the year there were**
25 **prepayments made. Is that what you are referring to?**

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11 (Pages 41 to 44)

1 Q Well, that would be an example.
2 A And that prepayment is a prepaid for the
3 following year's service, and, you know, it's recorded
4 as a prepaid expense by the entity making the
5 statement and deferred income by the entity receiving
6 the payment.
7 Q When you say "deferred income," does that
8 mean that it could only be -- it would only be
9 recognized as income as the services were actually
10 provided in the next year?
11 A Correct.
12 Q So taxes wouldn't be due on that income
13 until the next year?
14 A As long as it was paid to an accrual-basis
15 entity. If it was paid to a cash-basis entity, that
16 deferred income would be part of the accrual cash
17 adjustment and reverse out.
18 Q Can you tell me the reason -- well, which
19 companies would typically prepay accounts?
20 A SK Foods, SSC Farming and Salyer American.
21 Q To which entities would they typically
22 prepay?
23 A SS Farms.
24 Q What was the reason --
25 A And SKF Aviation.

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1 Q What was the reason for doing it that way?
2 A For tax purposes -- well, there is a couple
3 reasons.
4 One reason is that there was a benefit to
5 pay it prior to the end of the year in that it assured
6 the services for the following year, and then in some
7 situations there was a discount provided for that
8 prepayment, and then for tax purposes there was a
9 deduction for the entity making the payment if it was
10 done prior to the end of the year.
11 Q When you say there was a discount provided,
12 in some instances was that a 2 percent discount for
13 prepayment?
14 A I think it varied, but that sounds like it
15 would be a reasonable discount to provide.
16 Q Are you aware of any practice used by any of
17 the Salyer companies of transferring cash from one
18 entity to another when one of the companies needed
19 cash and another company had cash?
20 A There was intercompany transactions where
21 money was lent between entities.
22 Q When one company would loan money to another
23 company, was interest charged?
24 A Yes.
25 Q Do you know the rate of interest?

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1 A There was at least the AFR rate, which is
2 the IRS statutory rate, and I believe -- so I would
3 estimate that normally was between 5 to 8 percent,
4 depending what period of time you are looking at. It
5 fluctuates monthly, the AFR rate.
6 Q What does AFR stand for?
7 A Applicable federal rate.
8 Q Do you know why the Salyer companies
9 assessed interest on intercompany loans at the AFR
10 rate, or at least the AFR rate as you put it?
11 A If you don't -- if you don't charge
12 interest, then the IRS deems interest on the loan. So
13 even though there is no -- there is no interest, you
14 have to compute it as if there is interest and it
15 causes complexities.
16 Q So it fouls up your tax returns --
17 A Correct.
18 Q -- if you don't actually charge the interest
19 on your own books?
20 A It makes it more complicated, but also --
21 also to the extent these are loans, you need to charge
22 interest on loans. So, first off, as an intercompany
23 loan, it would be charged. Short-term advances, there
24 is no interest.
25 Q What's the difference between a short-term

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1 advance and a loan?
2 A A short-term advance, you know, would be
3 like AP. For example, SSC Farming would sell tomatoes
4 to SK Foods. That's in the normal course of business.
5 So as long as, you know, SK Foods paid SSC
6 similar to how it paid its other growers -- similar to
7 other growers, and the other growers didn't get
8 charged interest, then that's a normal course of
9 business, you know, payment. It's kind of like AP
10 versus an intercompany note.
11 Q Okay. So are you saying that when -- let's
12 say the farming entities would sell product to
13 SK Foods. As long as SK Foods paid the invoice for
14 that within about the same amount of time that they
15 would pay another provider of produce, then no
16 interest would be charged?
17 A Correct.
18 Q But if it was not an accounts payable-type
19 situation and it was essentially a transfer of money
20 that was not directly for the provision of some good
21 or service, then interest would be charged?
22 A Correct.
23 Q Do you know whether -- well, in that latter
24 situation, do you refer to that as an intercompany
25 loan?

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12 (Pages 45 to 48)

1 A Yes.

2 Q Do you know whether those loans were
3 typically documented with a note or some other loan
4 document?

5 A Typically not.

6 Q But interest was charged even if there was
7 no document?

8 A Correct.

9 Q Now, was that practice of loaning money from
10 one company to another and paying interest, even
11 though there was no note or other document underlying
12 it, a fairly common practice with the Salyer entities?

13 A Yes.

14 Q And is that a practice that you have
15 experienced with -- in dealing with your other
16 clients?

17 MR. O'GARA: I'm going to object to that
18 question. Once again, it calls for an opinion.

19 MR. BROSNAHAN: No, I'm just asking if he's
20 ever -- if he has experience with that.

21 MR. O'GARA: Why don't you rephrase the
22 question.

23 MR. BROSNAHAN: Okay.

24 Q Other than in your work with the Salyer
25 companies, do you have experience with the practice of
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1 have been testifying about where an intercompany loan
2 with interest running on it is not supported by an
3 underlying note or loan document?

4 A You can have an oral agreement. Again,
5 it's -- I have not really been involved with the
6 company on setting up their notes on intercompany
7 transactions, so --

8 Q So you say you can have oral agreement?

9 A Uh-huh.

10 Q That's yes?

11 A Yes. I mean, it's not documented, but there
12 could be, so --

13 Q Right. Is it fair to say that in your work
14 you have not been concerned that there was anything
15 improper about having a loan from one related company
16 to another that carries interest but is not documented
17 with a note or other loan document? Is that fair?

18 A From the tax standpoint, as long as they're
19 treated consistently with interest, that's what I
20 would be concerned about.

21 Q In your experience, did the Salyer entities
22 treat those transactions consistently?

23 A I believe so.

24 Q Consistently charging interest from the
25 borrowing company going to the lending company?
Page 51

1 one company making a loan to a related company and
2 getting interest on that loan but there not being any
3 note or other loan document?

4 A Yes.

5 Q Have you dealt with that situation on many
6 occasions for other clients?

7 A I don't know about many. I have seen it.

8 Q Is it -- in your experience, is that the
9 usual way that intercompany loans are handled?

10 A I mean, there is no one way. I mean, every
11 company is different in how they manage their cash
12 flow.

13 Q Are you aware of any accounting rules that
14 prohibit the practice that we just described where
15 there is a loan from one company to another and no
16 underlying loan document?

17 MR. O'GARA: I am going to object to that
18 question on the same grounds. Requesting expert
19 opinions here.

20 MR. BROSNAHAN: Are you instructing him not
21 to answer?

22 MR. O'GARA: Yes, I am.

23 BY MR. BROSNAHAN:

24 Q Have you ever been concerned about whether
25 there was anything improper in the practice that you
Page 50

1 A Yes.

2 Q And as -- were those transactions, these
3 loan transactions, reflected on the books of both of
4 the entities?

5 A Yes, as far as I know.

6 Q You don't know of any instance where that
7 was not done?

8 A No, or it was corrected, so --

9 Q Okay. Was that important to you for
10 purposes of preparing the taxes, that it be --

11 A Yes. It is -- like I said, doing the
12 returns, doing it for all the entities, you want to
13 make sure that they're recording transactions
14 consistently between the parties.

15 Q So that was important to you?

16 A Yes.

17 Q That -- okay. Do you recall whether there
18 was any convention or custom by the Salyer entities to
19 try to square up the accounts at any particular point
20 of the year or at some regular interval? When I say
21 square up the accounts, I mean eliminate any
22 intercompany loans that might exist.

23 A It's varied over time, but they have become
24 more diligent in reducing the amount of intercompany
25 loans recently due to concerns by the bank and
Page 52

1 **restrictions on those intercompany loans.**

2 Q What restrictions are you referring to?

3 A **I believe within the last few years the**
4 **banks have -- have wanted the intercompany**
5 **transactions, loans, you know, reduced.**

6 Q How did you obtain that understanding?

7 A **Through discussions with Mark McCormick and**
8 **Shondale most likely.**

9 Q Were the intercompany loans reduced?

10 A **Yes.**

11 Q Do you know whether there were any
12 particular guidelines employed for when an
13 intercompany loan was appropriate and when it wasn't?

14 A **No, I don't.**

15 Q Now, putting aside the question of how often
16 an intercompany loan would be used, do you recall
17 whether there was any custom among the Salyer entities
18 of squaring up the accounts and paying off the various
19 loans?

20 A **No, not really.**

21 Q When you were doing the tax accounting, did
22 you sometimes observe that, say, one of the companies
23 would have a large balance owed to another of the
24 Salyer companies?

25 MR. HART: Objection. Improper

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1 hypothetical.

2 BY MR. BROSNAHAN:

3 Q You can answer. Do you want the question
4 again?

5 A **Yeah.**

6 Q Okay.

7 A **I don't know what to do.**

8 **MR. O'GARA: Objection. Incomprehensible.**

9 **BY MR. BROSNAHAN:**

10 Q When you were doing the tax work, did you
11 ever run across a situation where one of the companies
12 had a large loan balance owing to another of the
13 companies?

14 A **Yeah. There were large intercompany loans.**

15 Q Was that a fairly common occurrence that one
16 company or another would owe a large intercompany loan
17 to another company?

18 A **Yes. There was, like I say, a lot of**
19 **carryover from some -- especially from some of the**
20 **previous years' transactions.**

21 Q Was any of that a problem for you for
22 purposes of the tax accounting?

23 A **Not as long as they were treated**
24 **consistently for tax -- again, it doesn't really --**
25 **it's not a concern generally.**

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1 Q Do you recall which companies typically were
2 borrowing money from which other companies, if there
3 was a pattern to it at all?

4 A **The farming entities borrowed cash because**
5 **there is -- obviously for them it was a period at**
6 **which there is no, you know, cash coming in. They're**
7 **a seasonal business, so they would borrow money.**

8 **There is intercompany loans that were set up**
9 **between SK Foods and foreign entities for the**
10 **acquisition of the shares of those companies. SS**
11 **Farms, I believe, made loans to farm entities and**
12 **aviation.**

13 Q Was it fairly typical that the farming
14 entities would receive loans from SK Foods early in
15 the season and pay those loans back after the harvest?

16 A **I am not sure. Again, I am looking at more**
17 **of a point of time, not during the year as much, so --**
18 **for tax that's what I am most concerned about.**

19 Q Was there any effort made to get the loans
20 paid back before the end of the tax year?

21 A **I would imagine, if they could. I mean,**
22 **that's something that was probably done internally by**
23 **the company.**

24 Q For what, the tax year, calendar year?

25 A **Calendar year.**

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1 MR. BROSNAHAN: Why don't we take a short
2 break right now. Is that okay?

3 MR. O'GARA: Good.

4 THE VIDEOGRAPHER: We are off the record at
5 3:09 p.m.

6 (Recess taken, 3:09 to 3:12 p.m.)

7 (Document referred to herein marked for
8 identification Exhibit No. 2)

9 THE VIDEOGRAPHER: We are back on the record
10 at 3:12 p.m. You may proceed.

11 BY MR. BROSNAHAN:

12 Q Mr. Boos, I have given you Exhibit 2 as
13 marked by the reporter, which is an organization
14 chart.

15 Do you recognize that organization chart?

16 A **Yes. It looks like something prepared by**
17 **our office.**

18 Q And this is the chart you referred to
19 earlier that is periodically updated by someone in
20 your office?

21 A **Yes.**

22 Q You see that this particular version says
23 updated 9/15/2008. Do you see that?

24 A **Yes.**

25 Q Do you know whether you have ever seen a

Page 56

14 (Pages 53 to 56)

1 version of this chart that was updated after
2 September 15, 2008?
3 **A It should have been updated since then.**
4 **There has been new entities since this time period.**

5 Q But have you ever seen one that's more
6 recent than this?

7 **A I can't tell you if I have or not. I mean,**
8 **I thought I did, but --**

9 Q Do you recall ever participating in any
10 discussions about changing practices at the
11 Salyer-affiliated companies to have more of the
12 intercompany transactions documented by underlying
13 contracts?

14 **A With regards to the agreements between the**
15 **parties, yes, like the farming -- farming agreements,**
16 **the harvesting agreements specifically relating, I**
17 **remember, to Salyer American, and obviously that is a**
18 **goal to document, you know, as much as you can. The**
19 **more the better, so --**

20 Q Do you know whether there was an effort made
21 at some point in time to document more of the
22 transactions than had been documented in the past?

23 **A Probably so. I mean, I know there is an**
24 **effort to clean things up in the last few years. Part**
25 **of that, I am sure there was a documentation.**

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1 Q What do you mean by "clean things up"?

2 **A Well, to reduce the amount of intercompany**
3 **transactions that were, you know, required to be done,**
4 **so that if somebody -- you know, really not just to**
5 **haphazardly loan money between entities. I mean,**
6 **there was an effort made to kind of reduce the number**
7 **of circumstances that happened.**

8 Q When one of the Salyer entities would loan
9 money to one of the other entities, what accounting
10 entries would be made in the general ledger system?

11 **A I wasn't involved with that.**

12 Q Are you familiar with the use of journal
13 entries by the Salyer companies?

14 **A I know that they prepare a journal. What do**
15 **you mean by -- what specifically on the journal**
16 **entries?**

17 Q Maybe we can look at some later, but I am
18 wondering whether you know if there was a practice,
19 when an intercompany loan was made, of making an entry
20 in the journal, the general ledger journal.

21 **A I would assume that they did because it did**
22 **get in there by the trial balance I looked at. I just**
23 **wasn't involved personally myself in recording those**
24 **transactions --**

25 Q And --

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1 **A -- or reviewing those journal entries.**

2 Q When you say in the trial balance, what do
3 you mean?

4 **A The trial balance is just a printout of the**
5 **GL at a period of time. Normally I would see it at**
6 **the end of the year or monthly, on a monthly -- on a**
7 **periodic monthly basis.**

8 Q And if there were outstanding intercompany
9 loans, they would be reflected in that trial balance
10 that you looked at?

11 **A Yes.**

12 Q And for purposes of your tax work, did you
13 look only at the bottom line balance, or were you able
14 to look at the individual transactions that made up
15 that balance?

16 **A We normally didn't look at individual**
17 **transactions. It's not really needed for tax work.**

18 Q For tax work, all you needed to see was the
19 outstanding loan balance owed from one of the
20 companies to another of the companies?

21 **A Uh-huh.**

22 MR. BROSNAHAN: I'll ask the court reporter
23 to mark a document entitled "Consolidated Farming
24 Operations SS Farms, LLC/SSC Farming/SSC 1 Farming/SSC
25 2 Farming Financial Statements For The Six Months

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1 Ending June 30, 2008."

2 (Document referred to herein marked for
3 identification Exhibit No. 3)

4 MR. O'GARA: Is this three?

5 MR. BROSNAHAN: Three.

6 Q Mr. Boos, please take a look at Exhibit 3,
7 and then tell me if you recognize it.

8 (Witness reviews document.)

9 **A I don't think I personally have seen this**
10 **before.**

11 Q Have you seen financial statements of this
12 type for the consolidated farming entities, regardless
13 of whether you have ever seen this particular
14 financial statement?

15 **A I don't think I have ever seen a**
16 **consolidated farming operations financial. I have**
17 **seen separate company ones.**

18 Q For the farming entities, you have seen
19 separate company ones?

20 **A Yeah. This isn't like their workbook they**
21 **would typically do, but it would be on an entity**
22 **basis. This may have happened. We may have this in**
23 **our files. I don't know. If it is, I haven't seen**
24 **it.**

25 Q How many people in your office work on

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15 (Pages 57 to 60)

1 Salyer matters?
2 **A Probably about ten.**
3 Q How many of them work on the tax matters?
4 **A Tax return?**
5 Q Yes.
6 **A Probably about six or seven.**
7 Q What do the other people do for the Salyer
8 entities?
9 **A The ones I mentioned that did the**
10 **accounting, the three that I mentioned, and then we**
11 **have some that do tax credit work for SK Foods.**
12 Q Now, you mentioned that you have seen
13 financial statements for the individual farming
14 entities.
15 Can you tell me the circumstances under
16 which you were looking at those documents? In other
17 words, why were you looking at those documents?
18 **A We would look at it to do the tax return,**
19 **and then, you know, for the end-of-the-year tax**
20 **projections, we know we would again get the monthly**
21 **trial balance and information like this, usually as of**
22 **October. And then for quarterly estimates, we would**
23 **get them on a -- we may get them on a quarterly basis.**
24 **Not always, though.**
25 Q Now, looking at Exhibit 3, and particularly
Page 61

1 the second page of Exhibit 3, do you see the line that
2 says "Related party receivable"?
3 **A Uh-huh.**
4 Q What does that reflect?
5 **A What does the nature of that amount?**
6 Q Yes.
7 **A I don't know. What caused it? I don't know**
8 **what --**
9 Q No. I mean, related-party receivable, is
10 that how the SSC Farming entities would reflect any
11 loans made to other Salyer companies?
12 **A Yes. This is a receivable that SS Farms has**
13 **of \$4 million. I don't think on the schedule here it**
14 **reflects who it's from, but that's a net number.**
15 Q Okay. And down, further down on this sheet
16 where it says "Related party debt, excluding current
17 installations," do you see that line?
18 **A Uh-huh.**
19 Q And does that reflect loans owed to related
20 parties?
21 **A Yeah. The \$11 million there is a debt that**
22 **is owed by SSC to some related entity or combination**
23 **of related entities.**
24 Q For your -- the tax work that you have done,
25 is it important that the related-party debts be

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1 accurately reflected?
2 **A Yeah. It's important that the trial balance**
3 **be accurately reflected, so it's part of the trial**
4 **balance.**
5 Q How about the assets? So, for example,
6 where it says "Property, plant, and equipment," is it
7 important that that be accurately reflected for
8 purposes of the trial balance?
9 **A Yes, it is. But we don't -- as tax**
10 **preparer, you don't go through and audit the**
11 **information, so it's company provided.**
12 Q In preparing the tax returns, is it
13 important that the assets shown as being on the books
14 of any particular entity actually belong to that
15 entity?
16 MR. O'GARA: Once again, objection on the
17 grounds it asks for an opinion.
18 BY MR. BROSNAHAN:
19 Q Was that important to you in preparing the
20 tax returns?
21 **A Well, I think it falls under my statement**
22 **about it's important the trial balance is correct, but**
23 **yet again we don't go through and audit the**
24 **information. So --**
25 MR. BROSNAHAN: I would like the court
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1 reporter to mark as Exhibit 4 a document that consists
2 of a series of e-mails. On the first page it says
3 "redacted" and then forwarded message from Scott
4 Salyer, date Wednesday, May 23, 2007. It's to Wayne
5 Boos.
6 (Document referred to herein marked for
7 identification Exhibit No. 4)
8 (Witness reviews document.)
9 BY MR. BROSNAHAN:
10 Q Have you had a chance to take a look through
11 the exhibit?
12 **A Yes.**
13 Q On the first page, Mr. Salyer sends an
14 e-mail to you and says, "Wayne SSC 1 & 2 have property
15 in escrow (2600 acres) with Westlands Water District.
16 This property will be farmed on a limited basis
17 (1,000 acres +/-) but mainly used for waste water
18 discharge from Lemoore plant. Westlands property will
19 be purchased for approximately \$1 million, \$850,000 by
20 late June."
21 Do you see that?
22 **A Yes.**
23 Q Do you recall any discussions with
24 Mr. Salyer about that subject?
25 **A Yes.**

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16 (Pages 61 to 64)

1 Q What was your involvement in the acquisition
2 of the Westlands Water District property?

3 A I think on this particular one there was
4 some discussion, because of the water -- federal water
5 availability, using these SSCI and SSCII as new
6 entities so that the companies could get reduced water
7 costs from the federal government.

8 And there had to be a difference in
9 ownership in order to do that. I remember Stephanie
10 had to have a certain percentage of ownership in order
11 to accomplish that.

12 So I know we had discussions with the -- an
13 attorney that was involved in water law, as well as
14 Rick Emmett and probably Scott, you know, at another
15 time. And the wastewater, I'm sure, came up as part
16 of that too.

17 Q Why were you involved in that discussion?

18 A Its entities and, you know, for tax
19 purposes, you know, what entity to put things in, how
20 it would affect the companies -- or, you know, all the
21 companies -- all the companies themselves, the
22 operations, make sure it got kind of put in -- there
23 was no tax issues associated with what they were
24 planning to do, the company was planning to do.

25 Q Are you saying that for tax purposes it was

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1 important that the -- that the water -- wastewater
2 discharge property be held by the entities SSC Farms I
3 and SSC Farms II?

4 A Not for tax purposes. I believe it was for
5 federal water. Under Bureau of Reclamations there are
6 some rules on acreage, that you can only have so many
7 acreage under farming, and you can use related
8 entities -- related individuals to accomplish that,
9 and that's what they have attorneys that work on to
10 maximize that benefit.

11 Q And that's why it was important that the
12 land be held by SSC Farms I and SSC Farms II?

13 A Yes.

14 Q Did it make any difference whether the money
15 to pay for that property came from some other entity,
16 or did it only matter who actually held title to the
17 land?

18 A For the water law? I don't even want to
19 guess. I'm not an expert in that area, the legal
20 issue.

21 Q For purposes of how the assets were
22 reflected on the books of the farming entity, in terms
23 of whose assets they were, was it booked according to
24 who held title to the land?

25 A Yes.

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1 Q In all your work with the Salyer entities,
2 have you ever seen a situation where the ownership of
3 land did not track who held title to the land?

4 A I don't -- I don't recall any.

5 Q In your work with any of the other clients
6 that you have where the client has related companies,
7 have you ever seen a situation where an asset was
8 reflected on the books of a company that was not the
9 company that held title to the asset?

10 A Not personally, no.

11 Q Have you -- did you ever hear anybody
12 connected with the Salyer entities say that the asset
13 should be reflected on the books of whatever company
14 may have provided money to purchase the asset?

15 A No.

16 Q How about in your work with any other
17 clients? Have you ever heard that assertion?

18 A No.

19 Q Was it ever your opinion that an asset
20 should be reflected on the books of the Salyer company
21 who provided money to pay for that asset?

22 MR. HART: Objection. Asked and answered.

23 BY MR. BROSNAHAN:

24 Q You can answer.

25 A Can you do the question again?

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1 Q Sure. Did you ever have the opinion that
2 the assets shown on the books of the various Salyer
3 entities should be reflected on the books of whatever
4 company may have provided money to buy the asset,
5 regardless of in which company's name title was held?

6 A No.

7 Q In -- do you recall the Westlands water
8 deal?

9 A Somewhat.

10 Q Do you know where the money came from to buy
11 that property?

12 A No.

13 Q It didn't matter to you, for purposes of
14 your work, where that money came from, correct?

15 A No.

16 Q Could you --

17 A Correct.

18 Q All that mattered was that whoever actually
19 held title to the property had the property shown on
20 their book as an asset, correct?

21 A Uh-huh. As long as there was a note, they
22 borrowed money, a note corresponding with that
23 purchase for the funding.

24 Q For the funding. And would it be sufficient
25 if the loan transaction was reflected simply in

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17 (Pages 65 to 68)

1 general ledger entries with an associated interest
2 payment?
3 **A Yeah. And subsidiary detail that broke it**
4 **out and tracked it, yeah, which they have done for**
5 **their intercompany.**

6 Q Which they have done for the intercompany,
7 you are saying?

8 **A Yes.**

9 Q It wasn't necessary that there actually be a
10 signed promissory note; is that correct?

11 **A From my standpoint, no.**

12 Q Are you familiar with a piece of property
13 called the Rogers property?

14 **A Is that -- can you expand on it? Is that**
15 **the Colusa property?**

16 Q I believe it's one of the Colusa properties,
17 I believe.

18 **A Uh-huh.**

19 Q Have you ever heard of the Tihart property?

20 **A No.**

21 Q Have you heard that there is property in
22 Colusa County that was purchased by one of the farming
23 entities for use in wastewater discharge from the
24 processing operations of RHM?

25 **A Correct. Yes.**

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1 Q And why are -- why did you become aware of
2 that?

3 **A Well, the Rogers property I have heard, and**
4 **going back and pulling together documents, speaking**
5 **with somebody in our office, there was a letter to**
6 **Rogers, I guess, that came up as one of the documents**
7 **that we came across.**

8 Q That came up in your office?

9 **A Yeah.**

10 Q Why was your office dealing with that?

11 **A I don't know. I don't think I was involved**
12 **in that particular Rogers letter. I don't remember,**
13 **but --**

14 Q Do you --

15 **A I am not sure.**

16 Q Do you know whether the Salyer companies
17 would sometimes transfer money from one company to
18 another simply because the company to which the money
19 was transferred was short of cash and needed cash to
20 make some purchase?

21 **A Yes.**

22 Q Do you know whether that was ever done in
23 connection with property used for wastewater?

24 **A I don't recall to be specific on that one.**

25 Q Is it fair to say that if that happened,

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1 that would not affect your view of how the assets
2 should be reflected on the books?

3 **A On the tax return, correct.**

4 Q So just to restate that fully, in a
5 situation where one of the Salyer entities loaned
6 money to another Salyer entity, so that the second
7 Salyer entity could purchase an asset such as a piece
8 of real property, for purposes of your work on the
9 books that should be shown as an asset of the company
10 that actually made the purchase and holds title to the
11 property, correct?

12 **A For purposes of the tax return, yes.**

13 Q Are you aware of any purpose for which it
14 should not be reflected that way?

15 **A Well, I am not a lawyer. I am not going to**
16 **say the legal aspects of --**

17 Q Sure.

18 **A -- of ownership, but generally it's recorded**
19 **on who has title to the property.**

20 Q Are you aware of any situation that you have
21 encountered in the accounting world where the
22 ownership of the asset should be reflected according
23 to who provided money for it?

24 MR. O'GARA: Objection. Asks for opinion.

25

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1 BY MR. BROSNAHAN:

2 Q Are you aware of any situation that you have
3 encountered where you think it should be reflected on
4 the books of the company who provided the money?

5 **A I have not seen that.**

6 Q If you look back at Exhibit 4, you will see
7 a reference on the bottom of the first page to the
8 Corcoran Ranch. It says contracts have been signed --
9 MR. HART: Brian, I'm sorry. He apparently
10 got cut off.

11 UNIDENTIFIED VOICE: I have him on the line.
12 Do you want me to go ahead and put him on?

13 MR. BROSNAHAN: If you can, yeah.

14 MR. HART: I swear I didn't touch it.

15 MR. BROSNAHAN: I believe you.

16 MR. HART: And I said it on the record.

17 MR. BROSNAHAN: We have ghosts in our
18 phones. Hello. Hello. Yes, is Malcolm there?

19 UNIDENTIFIED VOICE: Yeah. Let me transfer
20 you.

21 MR. SEGAL: Hello.

22 MR. BROSNAHAN: Hi, Malcolm. Sorry you got
23 cut off.

24 MR. SEGAL: That's okay. I will put you
25 back on.

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18 (Pages 69 to 72)

1 MR. BROSNAHAN: We won't repeat the
2 testimony for you.

3 MR. SEGAL: That's okay.

4 BY MR. BROSNAHAN:

5 Q Mr. Boos, would you please take a look at
6 the bottom of the first page of Exhibit 4, and you
7 will see a reference there that says contracts have
8 been signed to sell Corcoran Ranch for
9 \$12.45 million --

10 A Uh-huh.

11 Q -- parens, Blackstone Ranch.

12 A Uh-huh.

13 Q Do you remember any sale of the Corcoran
14 Ranch property?

15 A Yes.

16 Q Why were you involved with that?

17 A Because it was going to trigger a large tax
18 gain.

19 Q And do you know what the proceeds from the
20 Corcoran Ranch sale were used for?

21 A Part of them. Part of them was used to pay
22 off a house that was in Blackstone, which Scott lives
23 in in Monterey. The loan on that house. And then I
24 believe part of it may have been loaned to other
25 entities. I don't know the specifics of that, though.

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1 Q Do you know whether any of the proceeds of
2 the Corcoran Ranch sale were used to buy property from
3 the Westlands Water District?

4 A I don't recall exactly, so I am sure we can
5 figure it out if we get the detail.

6 Q If you look further on that page, you will
7 see a reference to selling property in Visalia for
8 1.45 million. Do you see that?

9 A Uh-huh.

10 Q Do you know what the proceeds of the sale of
11 the Visalia property were used for?

12 A No. No.

13 Q If you look at the fifth page of Exhibit 5
14 [sic], at the bottom you will see that as part of this
15 e-mail string is an e-mail from Mr. Salyer to
16 Mr. Emmett saying, "Rick" -- this is re Westlands
17 Water District land purchase. It says, "Rick We'll
18 plan to use funds from Visalia to fund transaction."

19 Does that refresh your recollection that
20 funds from the Visalia sale were used to buy the
21 property from the Westlands Water District?

22 A Well, they could have been. I don't recall
23 specifically.

24 Q Do you know what entity owned the Visalia
25 property?

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1 A I believe it was Blackstone.

2 Q Do you know what entity owned Corcoran
3 Ranch?

4 A That was Blackstone.

5 Q Going back to Exhibit 3, which is the
6 financial statement, do you recall whether the entries
7 for property, plant and equipment shown as assets for
8 the various farming entities were reflected at book
9 value or at some other measure?

10 A I would believe they would be reported at
11 cost. Well, this is -- let's see. Well, no, this is
12 probably a net accumulated depreciation, so that would
13 be book value.

14 Q Do you recall participating in any
15 discussions about -- well, strike that.

16 Do you see the line that says "Investments"?

17 A Yes.

18 Q Do you know the basis on which investments
19 were valued in the books of the farming companies?

20 A Do you know what the investment relates to?

21 Q I don't personally, no. Were there
22 different conventions?

23 A My -- my guess on that is that's an
24 investment in SS Farms Australia, although it seems
25 kind of high, but if it is -- if that's what it is, it

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1 was a hundred percent-owned entity. The original
2 capital contributed would show up in that account as
3 well as any accumulated earnings. I don't know why
4 else they would have an investment recorded on the
5 books. I guess it could be stock, but I don't think
6 they have that.

7 Q Other than the tax work that you have
8 described and the other accounting work done during
9 the outsourcing period and as part of that function,
10 have you done any other accounting work for any of the
11 Salyer entities?

12 A The only other -- I don't know if it's
13 accounting or consulting. The only other work we
14 would have done would have been the due diligence on
15 the acquisition of Salyer American Fresh Foods.

16 Q What due diligence was that?

17 A On Scott's acquisition of shares from his
18 father and sister.

19 Q Has any of the work that you have done been
20 tied into estate planning?

21 A Yes. Estate planning, yes. That's -- I
22 would say it's tax work, yes.

23 Q And how does your tax work relate to
24 Mr. Salyer's estate planning?

25 A Well, obviously it's a -- estate tax is what

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19 (Pages 73 to 76)

1 we're concerned about, and, you know, as a tax adviser
2 you want to minimize the client's estate tax for their
3 family. So obviously that's something that we looked
4 at.

5 Q For purposes of minimizing estate taxes, was
6 it important to make sure that the ownership of assets
7 was accurately reflected as among the various Salyer
8 entities?

9 A Yeah. You want to make sure that -- I mean
10 as far as, you know, ownership, I mean, you do look at
11 who owns it for estate tax purposes. So --

12 Q For those purposes, did you use the same
13 approach that you described earlier where the
14 ownership of the asset would be recorded according to
15 who held title to it, regardless of whether somebody
16 else might have provided funds to assist in purchasing
17 that asset?

18 A Yes.

19 Q Is it your understanding that SK Foods
20 currently owes money to banks that lent money to
21 SK Foods?

22 A Yes.

23 Q Do you know what banks those are?

24 A Bank of Montreal, Wells Fargo, Bank of
25 America, and I believe -- I don't know if Bank of the
Page 77

1 consulting or anything on that. It was just more
2 informational comment. Although I think part of it,
3 though -- one thing I do recall is that for tax
4 payments that may have come up in that aspect, because
5 if there was tax payments due and -- you know, for
6 example, for Scott, there may be a limitation on his
7 ability to get cash to make those tax payments, or the
8 trust.

9 Q Did any such restrictions imposed by the
10 banks cause problems for purposes of either the tax
11 accounting or the estate planning?

12 A I believe the bank -- banks did not allow
13 certain estate tax -- estate planning to go through.

14 Q When you say allow estate planning to go
15 through, what do you mean by that?

16 A There -- Mr. Salyer wanted to transfer some
17 of the ownership in SK Foods to his daughter's trust.

18 Q Was that an estate planning consideration
19 that was behind that?

20 A It was an estate and asset protection
21 planning.

22 Q It's your understanding that the banks would
23 not permit that?

24 A Correct.

25 Q Who -- where did you get the information
Page 79

1 West is here or not, but --

2 Q Do you recall ever participating in any
3 discussions regarding whether any of those banks would
4 allow SK Foods to make intercompany payments?

5 A I wasn't involved in any of those
6 discussions with the banks.

7 Q Have you ever heard that at some point in
8 the spring of 2009 the lenders to SK Foods were not
9 permitting SK Foods to make payments to related
10 companies?

11 A I believe they were scrutinized. Whether or
12 not they -- I don't recall if they -- it was a
13 flat-out against all, but they were definitely
14 scrutinized more so when FTI was in there, and other
15 consultants.

16 Q How did you obtain that information?

17 A I believe that Shondale told me that. Maybe
18 Mark. I'm not sure.

19 Q Do you recall the circumstances of that
20 discussion as -- in other words, why she was telling
21 you that?

22 A I think it's just the -- the type of stuff
23 that -- you know, scrutiny that the company was
24 beginning to come under during that time period.
25 There was nothing -- we weren't providing any
Page 78

1 that the banks would not permit that?

2 A I am sure that was from Mark McCormick, who
3 is the --

4 Q Are you aware of any other transactions that
5 the banks would not permit, specific transactions?

6 A The -- the merger of RHM and SK Foods.

7 Q What's your understanding of why the banks
8 would not permit that?

9 A Because there was different creditors that
10 the collapse of them into one entity may have affected
11 one versus the other.

12 Q Other than the transactions you've
13 described, do you know of any other transactions the
14 banks would not permit?

15 A There was an overall reduction on payments
16 in general that began around December.

17 Q A reduction in intercompany payments?

18 A All payments, vendor payments. Vendor,
19 V-E-N-D-O-R.

20 Q And was that reduction particularly steep
21 for intercompany payments?

22 A I am sure it was. I mean, all payments in
23 general were significantly affected.

24 Q Do you recall any other discussions about
25 wastewater properties besides what you have already
Page 80

1 testified to?
2 **A No, I don't believe so.**
3 **Q Was your involvement limited to --**
4 **A Well, no, I take that back.**
5 **There was some discussion that came up when**
6 **Marshall was doing the intercompany reconciliations,**
7 **Marshall Scott, that the wastewater discharge payments**
8 **were not made.**
9 **Q Okay. When did that discussion come up?**
10 **A I believe it was in the summer.**
11 **Q Summer of?**
12 **A '08.**
13 **Q And what was Mr. Scott's position at that**
14 **time?**
15 **A Well, I think they found out they just were**
16 **not paid, so then they accrued them out from -- I**
17 **don't know if it was previous years or how many years**
18 **were paid, but there was some discussion about that.**
19 **Q Why were you involved in that discussion?**
20 **A I think it came up as -- as an overall -- an**
21 **analysis of the cash flow needs of Scott and the**
22 **related entities on some planning work that we were**
23 **doing for the, you know, estate planning, that, you**
24 **know, cash flow, and that was one -- one of the items**
25 **that provided cash flow, was the wastewater payments.**

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1 **Q How was the cash flow needed for estate**
2 **planning?**
3 **A There was a -- as part of the estate**
4 **planning there was going to be a sale of the property**
5 **on a note basis, and Scott's daughter's trust needed**
6 **the cash in order to fund the payment terms of that**
7 **note.**
8 **Q What do you mean, a sale of property on a**
9 **note basis?**
10 **A Scott was going to sell his ownership in**
11 **SK -- part of his ownership in SK Foods to his**
12 **daughter's trust on an installment basis. So in order**
13 **for her to pay back that note, there needed to be**
14 **adequate cash that she would be or the trust would be**
15 **receiving to make those payments.**
16 **Q But that sale of the property on a note**
17 **basis never went through; is that correct?**
18 **A Correct.**
19 **Q But had it gone through, the daughter's**
20 **trust would have been receiving payments on the**
21 **wastewater contracts that could --**
22 **A Correct.**
23 **Q -- that could be used to pay -- pay interest**
24 **and principal on the note that would have been**
25 **associated with the sale of Scott's interest in**

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1 SK Foods?
2 **A Correct.**
3 **Q Have you ever seen any contracts providing**
4 **for wastewater discharge?**
5 **A I saw the ones that are, you know, filed**
6 **with the bankruptcy court.**
7 **Q When did you see those?**
8 **A I have seen them within the last month and**
9 **may have seen them before. I don't recall. I did see**
10 **a draft of one that was done in '07 that wasn't**
11 **finalized.**
12 **Q Why did you have occasion to see a draft of**
13 **one in 2007?**
14 **A Because it came up when I was searching for**
15 **my documents to provide for this deposition.**
16 **Q I guess my question was: In 2007 what were**
17 **the circumstances under which you saw a draft of an**
18 **agreement?**
19 **A Scott sent it to both myself and the**
20 **attorney for comments.**
21 **Q Which attorney?**
22 **A Gary Perry.**
23 **Q Do you recall if you had any comments?**
24 **A I didn't -- I don't think I had any**
25 **comments. I didn't see any.**

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1 **Q What was your role in the transaction such**
2 **that he would be seeking your comments?**
3 **A Just from the tax point, if there were any**
4 **tax issues with the payments.**
5 **Q Do you mean how the payments would be**
6 **accounted for from a tax standpoint?**
7 **A Yes, or if there was any planning that, you**
8 **know, when the timing of them could be made or not**
9 **made, and in this particular case I don't think there**
10 **was any tax issues associated with that.**
11 **Q Do you know whether there was a written**
12 **contract that pertained to the wastewater discharge**
13 **prior to May of 2008?**
14 **A Well, the draft that he sent was in '07. I**
15 **don't think it was executed. The terms, I think, are**
16 **different. I don't know if there was anything else.**
17 **Q So you have recently seen a copy of the 2007**
18 **draft?**
19 **A Correct, yes.**
20 **Q Do you recall what property it pertained to?**
21 **A No, not off the top of my head.**
22 **Q Do you know if it was property in Colusa?**
23 **A I don't know. It's either Colusa or**
24 **Lemoore.**
25 **Q It was just one contract that you --**

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21 (Pages 81 to 84)

1 A **It was one contract, yes.**

2 Q And you recall that the terms of it were
3 different from the terms that were in the agreement
4 that was ultimately signed?

5 A **Yes.**

6 Q How were they different?

7 A **It used the term lessor and lessee in one**
8 **versus -- I don't know if I have it here. What did --**
9 **they're called something different in this executed**
10 **contract.**

11 Q Do you recall why that was?

12 A **I don't recall. I don't think I was**
13 **involved with providing the comments back. It must**
14 **have been a legal something that the attorneys**
15 **changed.**

16 Q Do you recall whether the economic terms
17 were different?

18 A **I don't know.**

19 Q Now, going back to the discussion with
20 Marshall Scott, he was a consultant at that time?

21 A **Yes.**

22 Q And he had a discussion with you personally?

23 A **I think we had an accountants meeting where**
24 **him and John Iacopi and Darrell Carlis and Carol**
25 **Vartanian from our office attended with Shondale and**
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1 A **I don't recall that.**

2 Q Do you recall whether the contracts called
3 for payment on an annual basis?

4 A **I wasn't involved with that.**

5 Q Other than the resistance of the banks to
6 paying the wastewater amounts in 2008, are you aware
7 of resistance by the banks to permitting wastewater
8 payments at a later point in time?

9 A **No, other than what I have read on the**
10 **declarations that have been filed.**

11 Q So whose declarations are you referring to?

12 A **The trustee's and Shondale's and Scott's, or**
13 **Scott's attorneys.**

14 Q Do you recall Shondale ever telling you that
15 it was difficult to get the wastewater payments made
16 because the banks didn't want payments to related
17 companies?

18 A **Specifically on the wastewater, no, I don't**
19 **think I had those discussions.**

20 Q Did she say that generally with respect to
21 related-company payments?

22 A **Yes.**

23 Q And approximately when was that?

24 A **Well, it was February. January, February,**
25 **March, April.**
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1 **Gene Kezirian, and that was held in September of '08.**
2 **Subsequently another one was held in December of '08,**
3 **and I think that's where some of those items were, you**
4 **know, discussed.**

5 Q So as part of that discussion, was it
6 discussed that the payments had not been made for the
7 '07 period?

8 A **I believe so. I'm not a hundred percent**
9 **sure.**

10 Q Do you recall if there was a decision made
11 to make the payment?

12 A **I think that they wanted the payments to be**
13 **made. I think they were trying to. I almost wanted**
14 **to say that the banks didn't allow it at first.**

15 Q Why not?

16 A **Because it was a related-party transaction.**

17 Q In the discussion that you participated in
18 in December of '08, what was said about the wastewater
19 payments?

20 A **I don't know -- I don't know how much was**
21 **said at that point in December. I don't --**

22 Q Do you recall any part of that discussion?

23 A **No.**

24 Q Do you recall whether the wastewater
25 payments were set up to be paid on a monthly basis?
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1 MR. BROSNAHAN: The videographer is telling
2 me that we're about to run out of the disk, so we're
3 going to take a break and then we'll come back and
4 wrap it up.

5 THE WITNESS: Okay.

6 THE VIDEOGRAPHER: This is the end of disk
7 number 1, volume 1. We're off the record at 4:02 p.m.
8 (Recess taken, 4:02 to 4:15 p.m.)

9 THE VIDEOGRAPHER: This is the beginning of
10 disk number 2, volume 1. We are back on the record at
11 4:15 p.m. You may proceed.

12 BY MR. BROSNAHAN:

13 Q Mr. Boos, does each of the Salyer companies
14 maintain a separate taxpayer identification number?

15 A **Yes.**

16 Q Does each of those companies file its own
17 separate tax return?

18 A **Where appropriate. Some are single-member**
19 **LLCs that get combined into the parent company return.**

20 Q What about the farming entities? SSC
21 Farming, LLC, for example, does it file its own --

22 A **All the farming entities file a separate tax**
23 **return.**

24 Q Each one of those?

25 A **Each one of them, yes.**
Page 88

1 Q Does each of the Salyer entities have its
2 own bank account?

3 A **I don't believe so.**

4 Q Does each of the farming entities have its
5 own bank account?

6 A **I think so.**

7 Q Does SK Foods have its own bank account?

8 A **Yes.**

9 Q Does each of the Salyer entities maintain
10 its own set of books reflecting its income?

11 A **Yes.**

12 Q Expenses?

13 A **Yes.**

14 Q Assets?

15 A **Yes.**

16 Q Liabilities?

17 A **Yes.**

18 MR. BROSNAN: What's the next exhibit?

19 Five. I am going to mark as Exhibit 5 a document
20 entitled "Declaration of Cary S. Collins in Support of
21 Opposition of SSC Farming, LLC, SSC Farms I, LLC, and
22 SSC Farms II, LLC to Chapter 11 Trustee's Motion for
23 Order Determining that Wastewater Discharge Agreements
24 with Related Parties Constitute 'Executory Contracts'
25 for Purposes of 11 USC Section 365."

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1 entities were sufficient to permit you to file
2 separate and independent tax returns?

3 A **Yes.**

4 Q For purposes of preparing the tax returns,
5 in reflecting transactions in the books and records,
6 is it important that the transactions be done at arm's
7 length?

8 A **Yes.**

9 Q What does that term mean to you?

10 A **It means on the same terms that they would
11 be provided to an unrelated party.**

12 Q In your dealings with the Salyer entities,
13 did they attempt to conduct intercompany transactions
14 on an arm's length basis as you've just defined it?

15 A **As far as I know. I mean, again, I wasn't
16 privy to how the transactions generally were set up,
17 but they, I think, tried to attempt that.**

18 Q For purposes of the work you were doing on
19 the taxes, would there have been a problem if the
20 transactions were not reflected on an arm's length
21 basis?

22 A **Well, the IRS has the ability, if things are
23 not done on an arm's length basis, to recast the
24 transaction.**

25 Q So for that reason, as you were preparing

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1 (Document referred to herein marked for
2 identification Exhibit No. 5)

3 BY MR. BROSNAN:

4 Q Mr. Boos, is this declaration from
5 Mr. Collins one of the declarations that you testified
6 earlier you had reviewed?

7 A **I saw this this morning in counsel's office.
8 That's the first time I had seen it.**

9 Q If you look at paragraph 4 on page 3,
10 beginning on line 11, there is a statement by
11 Mr. Collins that he has reviewed the federal and state
12 income tax returns for each of the Salyer family
13 entities for the calendar years December 31, 2006 and
14 December 31, 2007, and can attest that these entities
15 were maintained on an operationally separate and
16 distinct basis.

17 Do you see that?

18 A **Uh-huh.**

19 Q Do you agree that each of the Salyer family
20 entities was maintained on an operationally separate
21 and distinct basis?

22 A **Yes.**

23 Q And while you have been preparing tax
24 returns for the Salyer entities, has it been your
25 belief that the records that were maintained by those

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1 the tax returns, it was important that the
2 transactions actually be conducted on an arm's length
3 basis, right?

4 A **Yes.**

5 Q So far as you know, the transactions of the
6 Salyer entities that you have worked with over these
7 past 12 years have been conducted on an arm's length
8 basis, correct?

9 A **As far as I know.**

10 MR. BROSNAN: Mr. Boos, subject to any
11 right that we may have to reopen the deposition, I
12 have no further questions for you at this time. Thank
13 you very much.

14 EXAMINATION

15 BY MR. HART:

16 Q I have just a couple of questions, Mr. Boos.
17 Once again, my name is Christopher Hart and I
18 represent the Chapter 11 Trustee, Brad Sharp.

19 A moment ago you were testifying about your
20 knowledge of the transactions and the fact that to the
21 best of your knowledge they were conducted on an arm's
22 length basis.

23 Do you recall that?

24 A **Yes.**

25 Q Have you ever reviewed any of the wastewater

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23 (Pages 89 to 92)

1 discharge agreements and specifically the invoices
2 that were generated relating to the wastewater
3 discharge agreements?

4 **A I have seen the wastewater agreements and**
5 **the declarations, and I have not reviewed the**
6 **invoices.**

7 Q Do you happen to know if those agreements
8 were -- strike that.

9 Earlier this afternoon you referenced a
10 conversation that you had with Mr. Putterman on
11 Friday. Do you recall that?

12 **A I didn't have a conversation with him.**
13 **Somebody in our office did.**

14 Q I see.

15 **A David Goss.**

16 Q And I am sorry. What was the last --

17 **A David Goss, G-O-S-S.**

18 Q Have you ever had a conversation with
19 Mr. Putterman or anybody else with his firm outside
20 of, of course, today's deposition?

21 **A No. No.**

22 Q And that call on Friday, was that initiated
23 by Mr. Putterman's -- or Mr. Putterman's office to
24 your call -- your office?

25 **A I am not sure. I wasn't in the office when**

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1 **that -- on Friday when this all transpired.**

2 MR. HART: Those are all the questions I
3 have.

4 MR. BROSNAN: None for me.

5 MR. O'GARA: Anything else?

6 MR. BROSNAN: No.

7 THE VIDEOGRAPHER: This concludes today's
8 deposition. We are off the record at 4:23 p.m. The
9 master tapes will be held by The Souza Group.
10 (Deposition concluded at 4:23 p.m.)

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1 I, the undersigned, declare under penalty
2 of perjury that I have read the foregoing
3 transcript, and I have made any
4 corrections, additions, or deletions that
5 I was desirous of making; that the
6 foregoing is a true and correct
7 transcript of my testimony contained
8 therein.

9
10 Dated: _____ at
11 _____, California.

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25

WAYNE W. BOOS, CPA

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1 CERTIFICATE OF REPORTER

2
3 I, KAREN SCOTT, a Certified Shorthand
4 Reporter of the State of California, hereby certify
5 that the witness in the foregoing deposition was by me
6 duly sworn to tell the truth, the whole truth, and
7 nothing but the truth in the within-entitled cause;

8
9 That said deposition was taken in shorthand
10 by me, a disinterested person, at the time and place
11 therein stated, and that the testimony of the said
12 witness was thereafter reduced to typewriting, by
13 computer, under my direction and supervision;

14
15 I further certify that I am not of counsel
16 or attorney for either or any of the parties to the
17 said deposition, nor in any way interested in the
18 event of this cause, and that I am not related to any
19 of the parties thereto.

20
21 DATED:

22
23 KAREN SCOTT, CRP, CSR No. 4027
24
25

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24 (Pages 93 to 96)

The Souza Group
4615 First Street, Suite 200
Pleasanton, California 94566
(925) 846-8831

June 23, 2009

Mr. Wayne W. Boos
c/o Vincent O'Gara, Esq.

Murphy, Pearson, Bradley & Feeney
88 Kearny Street, 10th Floor
San Francisco, CA 94108

Re: In re SK Foods

Deposition of: WAYNE W. BOOS, CPA
Taken on Monday, June 22, 2009
Reported by Karen Scott, CSR No. 4027

Dear Mr. Boos:

The transcript of your testimony in the above matter is now available. Pursuant to CCP Section 2025(q)(1), the original transcript of your deposition in this case will be held at our office for your inspection and signing. If you do not read and sign it within 30 days from the date you receive this letter, it can be used as if you had done so.

If it is more convenient for you, you may read your attorney's copy of the deposition. Your attorney can advise us and opposing counsel of any changes you may make in your testimony. (Please do not change the questions.) Upon receipt of any changes, we will include them in the original transcript before it is filed with the court unless trial begins before the signature deadline.

Please ask your attorney how to proceed. If it is preferred that you read and sign the original transcript, please telephone us at (925) 846-8831 to arrange a mutually convenient appointment.

Sincerely,

Monica Lendway
Production Manager
The Souza Group

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25 (Page 97)

The Souza Group
(800) 230-3376

BMO 002045

A				
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PH's - Deft's Ex. 104
Depo of Wayne Boos
Date 8/15/11
AMANDA SCOTT, CSR

From: Wayne Boos <wboos@BOOSCPA.com>
Sent: Monday, April 6, 2009 6:38 PM
To: Mark McCormick <markmc@skfoods.com>
Subject: RE: NZ/Aust Loan roll forwards

Mark, did you get anything from Moss Adams. We are looking at this as well.

Wayne W. Boos CPA

Boos & Associates

Fig Garden Financial Center
5260 North Palm Avenue, Suite 120 | Fresno, California 93704
Phone (Main): 1.559.449.7688 | Phone (Direct): 1.559.408-7281
Fax (Main): 1.559.449.1934 | Fax (Direct): 1.559.408-7381
Cell: 1.559.288-2366
E-mail: wboos@booscpa.com

 Please consider the environment before printing this e-mail

From: Mark McCormick [mailto:markmc@skfoods.com]
Sent: Sunday, April 05, 2009 8:30 PM
To: Nick Frankish; Shondale Seymour
Cc: Richard Lawrence; Wayne Boos
Subject: RE: NZ/Aust Loan roll forwards

All,

I will call Dan Nutley at Moss Adams and Gary Perry tomorrow morning. Dan and Gary originated these transactions at the time that notes were transferred to the SSC&L Trust. Their workpapers and their original legal documents should be in the files.

-MMM

From: Nick Frankish [mailto:NICK@cedenco.co.nz]
Sent: Sunday, April 05, 2009 8:17 PM
To: Shondale Seymour
Cc: Mark McCormick; Richard Lawrence; Wayne Boos
Subject: RE: NZ/Aust Loan roll forwards

Shondale - my comments added to yours below

QUESTIONS:

1/ do you know why loan to trust was 18.2m not 26.9m ? It is a net number as it is shown in the adjustments. NF- The 26.9m was already a NET number per my first bullet point. There were 2 differences between 26.9m and 18.2m - 1/ FX adj rev and 2/ minority int adj.

SHARP_CH15 001333

2/ do you know why FX reversed 7.788m ? Do you know how this comes off the loans / interest balances? (it only relates to SKF Int and SKFA loans/interest) didn't intend to reverse anything except the current year activity on the FCX, only reclass it into the net payable/receivable. NF- I expect the 7.788m was the cumulative FCX, it could not be just the current yr. The reversal was dr equity cr loan, so was not a reclassification of receivable ?

3/ do you know what the minority interest adj 1.0m is ? this is something that came from the audit - I never had it in the workpapers - it was booked top level only and not to the gL

4/ is there a loan agreement between SKFLP and SSCL trust for 18.262m ? Assume there is no interest on loan as balance unchanged yr on yr - no loans - SKF assigned the debt to the SSCL trust (as far as I can tell - don't have signed docs) - the auditors said this was an investment vs a receivable as I had thought NF- My understanding is that the investments in NZ/Aust were 100% debt funded - which is the way it has been recorded here, and this has been an issue for the balance sheets (raised with MMM before). Down here none of the funds "invested" were recorded as equity, all as interest bearing debt

5/ are there any FS for SSC&L Trust which records loans / interest to NZ/Aust entities? Only FS are done by Wayne as I haven't had the staff to do it - trust acctg only. The trust should have recorded the interest to/from. I'll include Wayne on this as he can reply. NF- I will begin dialogue with Wayne

6/ as the loan between SKFLP and SSC&L appears fixed at 18.262m, the net increase / decrease in amount owing in USD after FX adjs and interest, therefore must occur in SSC&L books ? Yes - everything occurs on the trust's books - not on SKF - we have no ownership in Cedenco anymore and only the investment in the trust. NF- Is it possible for SKFLP to have an investment in the Trust, or is it a loan to the Trust ?

Regards

Nick

From: Shondale Seymour [mailto:ShondaleS@skfoods.com]
Sent: Monday, 6 April 2009 12:49 p.m.
To: Nick Frankish; Wayne Boos
Cc: Mark McCormick; Tracy A. Garone; Hinkelman, Andrew
Subject: RE: NZ/Aust Loan roll forwards

Nick,

SHARP_CH15 001334

Swamped on other items for our bank forbearance that is due this evening – I'll have to work on this tomorrow.

I can quickly tell you a few things – see below. The auditors have been asked to review this also and have the same workpapers that I sent to you. I've included Tracy on this e-mail so she stays in the loop.

Shondale

From: Nick Frankish [mailto:NICK@cedenco.co.nz]

Sent: Sunday, April 05, 2009 4:23 PM

To: Shondale Seymour

Cc: Mark McCormick

Subject: FW: NZ/Aust Loan roll forwards

Shondale

Need a reply asap - Thanks

Nick

From: Nick Frankish

Sent: Friday, 3 April 2009 2:35 p.m.

To: 'Shondale Seymour'

Cc: Richard Lawrence

Subject: NZ/Aust Loan roll forwards

Shondale

Thanks for the info you have sent me. As you know I am trying to confirm NZ/ Aust loan balances and balances transferred from SKFLP to the Trust.

I have established from your info:

- Per Berts workpaper #11A loan balances at 31/10/06 were:

USD Loan balances at 31/10/06

Loan	Interest	Total
SKF Int -	20,474,510	- 5,351,915 - 25,826,425
SKF Aust	- 8,673,575	- 2,633,070 - 11,306,645
CAP	5,499,980	935,223 6,435,203
CED	3,199,978	536,510 3,736,488

SHARP_CH15 001335

- 20,448,127 - 6,513,252 - 26,961,379

I agree with these numbers and they appear to be correctly FX adjusted. The SKF Int and SKFA loans are in NZD and AUD respectively and the other 2 loans from CAP and CED are in USD.

- FX as at 31/10/06

There is a Bert workpaper at 31/10/06 which has a FX gain to Equity of USD 7,788,137.

This implies the loan balance above before adjustment for FX was USD 19,173,242 (26,961,379 - 7,788,137)

- On 1/11/06 some part of the loans totalling 18,262,149 were apparently transferred to Grantor (SSC&L Trust)
- At next balance day 30/6/07 SKFLP reported related party loans to Grantor (SSC&L Trust) relating to NZ/Aust of USD 18,292,149 (proof in TB pg4, and in 2007 FS). A summary of Workpaper supplied is

USD Loan balances at 30/06/07

Loan	Interest	Total
SKF Int -20,474,510	-5,351,915	- 25,826,425
SKF Aust - 8,673,575	-2,731,469	- 11,405,044
CAP 5,499,980	935,223	6,435,203
CED 3,199,978	536,509	3,736,487

-20,448,127 -6,611,652 - 27,059,779

less FX ?? 7,788,137

less Min interest ?? 1,009,493

- 18,262,149

So the differences between 26,961,379 and 18,262,149 of 8,699,230 are

1/ Interest on SKFA loan - + 98,399

2/ FX reversed - 7,788,137

3/ Minority interest jnl - 1,009,493

- At next balance day 30/6/08 SKFLP reported same RP receivable - called Revocable Trust of USD 18,262,149 (proof note 8 2008 FS)

QUESTIONS:

1/ do you know why loan to trust was 18.2m not 26.9m ? It is a net number as it is shown in the adjustments.
 2/ do you know why FX reversed 7.788m ? Do you know how this comes off the loans / interest balances? (it only relates to SKF Int and SKFA loans/interest) didn't intend to reverse anything except the current year activity on the FCX, only reclass it into the net payable/receivable.

SHARP_CH15 001336

3/ do you know what the minority interest adj 1.0m is ? this is something that came from the audit – I never had it in the workpapers – it was booked top level only and not to the gL

4/ is there a loan agreement between SKFLP and SSCL trust for 18.262m ? Assume there is no interest on loan as balance unchanged yr on yr - no loans – SKF assigned the debt to the SSCL trust (as far as I can tell – don't have signed docs) – the auditors said this was an investment vs a receivable as I had thought

5/ are there any FS for SSC&L Trust which records loans / interest to NZ/Aust entities? Only FS are done by Wayne as I haven't had the staff to do it – trust acctg only. The trust should have recorded the interest to/from. I'll include Wayne on this as he can reply.

6/ as the loan between SKFLP and SSC&L appears fixed at 18.262m, the net increase / decrease in amount owing in USD after FX adjs and interest, therefore must occur in SSC&L books ? Yes – everything occurs on the trust's books – not on SKF – we have no ownership in Cedenco anymore and only the investment in the trust.

Nick

Nick Frankish | Group CFO | **Cedenco Foods** | Level 2, 12 Heather Street, Parnell, Auckland 1052. PO Box 137-337, Parnell, Auckland, 1151 | DDI: (+64 9) 362 0803 | PH: (+64 9) 362 0800 | Fax: (+64 9) 362 0806 | www.cedenco.com

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SHARP_CH15 001337

EXHIBIT 13

In The Matter Of:

In re: CEDENCO JV AUSTRALIA PTY LTD, et al,

LISA CRIST - Vol. 1
August 17, 2011

MERRILL CORPORATION

LegalLink, Inc.

135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

LISA CRIST - 8-17-2011

Page 1

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---o0o---

In re:)
) NO. 10-35002
CEDENCO JV AUSTRALIA PTY LTD, et)
al, (In Liquidation),) Chapter 15
)
Debtors in Foreign Proceedings.)
_____)

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Fresno, California

August 17, 2011

The deposition of LISA CRIST was taken in the above-entitled matter pursuant to all of the provisions of law pertaining to the taking and use of depositions before Amanda Scott, CSR, with offices at Fresno, California, commencing at the hour of 9:14 a.m. at the law offices of McCormick, Barstow, Sheppard, Wayte & Carruth, 5 River Park Place East, Fresno, California.

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1	INDEX		1	APPEARANCES OF COUNSEL:	
2			2	FOR THE SALYER ENTITIES:	
3	EXAMINATION	PAGE	3	FARELLA, BRAUN & MARTEL	
4	By Mr. Christmas	5	4	Attorneys at Law	
5	By Mr. Nuti	58	5	235 Montgomery Street	
6	EXHIBITS		6	San Francisco, California 94104	
7	NO. DESCRIPTION PAGE		7	(415) 954-4400	
8	1 Deposition Notice	5	8	kwoodruff@fbm.com	
9	2-6 (Skipped)		9	BY: KELLY A. WOODRUFF	
10	7 Resolutions	14	10	FOR THE LIQUIDATORS:	
11	8 General Assignment and Transfer of Shares	14	11	NIXON PEABODY LLP	
12	9 General Assignment and Transfer of Shares	14	12	Attorneys at Law	
13	10 Declaration of Trust	14	13	437 Madison Avenue	
14	11 Notice of Beneficial Ownership	14	14	New York, New York 10022	
15	12 Share Certificate	14	15	(212) 940-3000	
16	13 Share Certificate	14	16	rchristmas@nixonpeabody.com	
17	14 Standard Transfer Form	14	17	BY: ROBERT N.H. CHRISTMAS	
18	15 Standard Transfer Form	14	18	FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS:	
19	16 Share/Option Transfer Journal	15	19	DOWNEY BRAND	
20	17-25 (Skipped)		20	Attorneys at Law	
21	26 March 13, 2008 Letter From Scott Salyer	26	21	621 Capitol Mall, 18th Floor	
22	27 March 17, 2008 E-Mail From Lisa Crist	28	22	Sacramento, California 95814	
23	28-38 (Skipped)		23	(916) 520-5542	
24	39 March 28, 2008 E-Mail From Julie Patton	31	24	schristensen@downeybrand.com	
25	40 March 28, 2008 E-Mail From Julie Patton	34	25	BY: SPENCER W. CHRISTENSEN	
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1	INDEX CONTINUED		1	BY: JAMES HEISER	
2	EXHIBITS		2	Also Present: John Sheahan	
3	NO. DESCRIPTION PAGE		3	---oOo---	
4	41 (Skipped)		4	LISA CRIST,	
5	42 April 2, 2008 E-Mail	38	5	called as a witness herein, having	
6	43 (Skipped)		6	been heretofore duly sworn,	
7	44 Power Of Attorney	41	7	testified as follows:	
8	45-51 (Skipped)		8	---oOo---	
9	52 EIN Individual Request	17	9	(Exhibit 1 was marked for identification.)	
10	53 Bill Of Sale	44	08:54 10	EXAMINATION BY MR. CHRISTMAS	
11	54 Bill Of Sale	44	08:54 11	Q. Good morning, Ms. Crist. As you know, I'm	
12	55 Secretary of State Form	17	09:14 12	Robert Christmas. I'm representing the joint	
13	56 LLC Articles Of Organization	17	09:14 13	liquidators, Mr. Sheahan sitting to my right, and also in	
14	57-65 (Skipped)		09:14 14	the room is counsel for the committee, counsel for the SK	
15	66 Salyer Enterprises Flow Chart	23	09:14 15	Foods Chapter 11 trustee, and counsel for the Salyer	
16	67 Accounts Receivable Set Off Agreement	44	09:14 16	interests, just to refresh who you just met. And on the	
17	68 Bill Of Sale	53	09:14 17	phone is counsel for the Bank of Montreal.	
18	69 Register Of Members	53	09:14 18	Okay. I just want to set the table for the	
19	70 Register Of Notices of Beneficial Ownership	53	09:14 19	process. Have you ever been deposed before?	
20	71 Minutes of Meeting	53	09:15 20	A. I have.	
21	72 List of Documents Produced	16	09:15 21	Q. So you understand the process, that we can't	
22	73 General Assignment and Transfer Of Shares	20	09:15 22	talk at the same time, the court reporter can't take down	
23	74 Assignees and Transferees	21	09:15 23	two people talking at once. You'll probably anticipate	
24	75 Salyer Entities Chart	21	09:15 24	what my question may be, but it may end up in a different	
25			09:15 25	place than you think, so if you could wait for me to	

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09:15	1	finish my questions, then the record will be clearer.	09:18	1	A. I was head-hunted, I was recruited.
09:15	2	Also, the court reporter cannot take down non- -- visual	09:18	2	Q. And who recruited you?
09:15	3	communications, so nods don't work.	09:18	3	A. It was from Produce Careers.
09:15	4	Are you taking any medication today that would	09:18	4	Q. An outside agency?
09:15	5	interfere with your ability to remember or retell events?	09:18	5	A. Right, third-party.
09:15	6	A. No.	09:18	6	Q. And what were you hired to do there?
09:15	7	Q. Do you have any physical condition that impairs	09:18	7	A. I was hired on as the director of environmental
09:15	8	your memory?	09:18	8	health and safety initially.
09:15	9	A. No.	09:18	9	Q. And you just said "initially," so I presume
09:15	10	Q. Just like to ask you a few questions about your	09:18	10	that changed over time?
09:15	11	professional background. Can you tell me the post high	09:18	11	A. It did.
09:15	12	school degrees that you have, if any?	09:18	12	Q. Can you tell me how that changed?
09:15	13	A. Currently I have a degree in environment health	09:18	13	A. Sure. Initially in November of 2004 when I
09:15	14	and safety, and that's my current degree.	09:18	14	joined the organization, again, I was director of
09:16	15	Q. And from what institution?	09:18	15	environmental health and safety, and probably eight
09:16	16	A. From Merced College.	09:18	16	months into that role I was promoted to director of HR
09:16	17	Q. What year was that granted?	09:18	17	and EHS, which is environmental health and safety. HR
09:16	18	A. In 1998.	09:19	18	being human resources. And I believe in 2006 I was
09:16	19	Q. After you got that degree, is that the area in	09:19	19	promoted to vice president of HR and environmental health
09:16	20	which you have worked until now?	09:19	20	and safety.
09:16	21	A. Yes, but I have shared responsibilities in	09:19	21	Q. And did you hold that position until you left?
09:16	22	human resources as well as environmental health.	09:19	22	A. Yes, I did.
09:16	23	Q. Is that with your current employer?	09:19	23	Q. Okay. And to whom did you report?
09:16	24	A. Yes.	09:19	24	A. I initially reported to Steve King, the VP of
09:16	25	Q. And who is that?	09:19	25	operations, and then I reported to Mark Grewal, who at
Page 7			Page 9		
09:16	1	A. Morningstar Foods, LLC.	09:19	1	the time was the chief operating officer in 2005, and
09:16	2	Q. What is their business?	09:19	2	after 2006 I reported to Scott Salyer, the CEO and
09:16	3	A. Dairy food manufacturing.	09:19	3	president.
09:16	4	Q. And when did you join Morningstar?	09:19	4	Q. Just to do some housekeeping now, the court
09:16	5	A. December 21st of 2009.	09:19	5	reporter has marked as Exhibit 1 to your deposition the
09:16	6	Q. And where did you work before that?	09:20	6	notice of deposition, which I sent to your counsel, and
09:16	7	A. For SK Foods LP.	09:20	7	then following that is the subpoena that we issued.
09:16	8	Q. And when did you join SK Foods LP?	09:20	8	Have you seen that document before?
09:16	9	A. November 5th, 2004.	09:20	9	A. Yes.
09:16	10	Q. Where did you work before that?	09:20	10	Q. Okay. And did you understand that it required
09:17	11	A. Kagome, Inc., K-A-G-O-M-E, Inc.	09:20	11	the search for and production of responsive documents?
09:17	12	Q. And what are the times that you worked --	09:20	12	A. Yes.
09:17	13	A. June 20th, 1994 -- I'm sorry, 1996 to,	09:20	13	Q. Okay. And you did produce documents to me?
09:17	14	actually, November 4th, 2004.	09:20	14	A. Yes, I did.
09:17	15	Q. And where did you work for Kagome?	09:20	15	Q. Can you tell me where you looked in terms of
09:17	16	A. In Los Banos, where I currently live.	09:20	16	search for responsive documents?
09:17	17	Q. And what were your responsibilities?	09:20	17	A. An external drive.
09:17	18	A. Environmental health and safety and human	09:20	18	Q. Like a thumb drive?
09:17	19	resources.	09:20	19	A. Yes.
09:17	20	Q. And when you say "environmental health and	09:20	20	Q. And was this a drive that you kept at home
09:17	21	safety," would I be correct in assuming that that has to	09:20	21	while you worked at SK Foods?
09:17	22	do with helping your employer comply with state and	09:20	22	A. Yes, it was in my possession because I also
09:17	23	federal regulations?	09:20	23	provided support to the bankruptcy estate for SK Foods
09:17	24	A. Yes.	09:20	24	and related entities.
09:17	25	Q. How did you become acquainted with SK Foods?	09:20	25	Q. Okay. Was that on a consulting basis?

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09:21	1	A. Yes.	09:24	1	with his office?
09:21	2	Q. And were you paid for that?	09:24	2	A. I was the corporate secretary, and so from time
09:21	3	A. Yes, I was.	09:24	3	to time as the Salyer entities -- Scott Salyer's estate
09:21	4	Q. And how long were you a consultant?	09:24	4	planning, so there were various entities that were
09:21	5	A. For approximately one year.	09:24	5	involved in that, so from time to time as corporate
09:21	6	Q. So that was from the bankruptcy petition date	09:24	6	records evolved, meaning entities were formed or
09:21	7	forward for one year?	09:24	7	ownership changes occurred, I would maintain some of
09:21	8	A. Yes.	09:24	8	those records from a record-keeping, storage standpoint.
09:21	9	Q. And to whom did you report in that capacity?	09:24	9	Q. And when did you first become corporate
09:21	10	A. I don't know if I reported to any single	09:24	10	secretary?
09:21	11	person, but I provided services to Brad Sharp and his	09:24	11	A. In 2007, December of 2007.
09:21	12	team.	09:24	12	Q. And who held that position before you?
09:21	13	Q. And what were the nature of the services?	09:24	13	A. I don't know.
09:21	14	A. I helped reconcile benefits so the company was	09:24	14	Q. And were you corporate secretary through the
09:21	15	health insured for health benefits, and I provided	09:24	15	end of your employment with SK Foods?
09:21	16	services reconciling those for months after the filing of	09:24	16	A. Yes, I was.
09:21	17	bankruptcy, helping to support workers' compensation as	09:25	17	Q. Were you familiar with the existence of
09:21	18	it related to claims management. I provided services as	09:25	18	Australia and New Zealand subsidiaries of SK Foods?
09:21	19	it related to 401k plans and -- how do I say it, the	09:25	19	A. Yes, I am.
09:22	20	unraveling of 401k plans. The 401k plan was closed, so	09:25	20	Q. When did you first learn that they existed?
09:22	21	there was a significant process that was involved in	09:25	21	A. I knew upon my employment, just learning about
09:22	22	that. So basically all employee- and benefit-related	09:25	22	the organization.
09:22	23	services primarily.	09:25	23	Q. Did you have any responsibilities with respect
09:22	24	Q. Have you been named as a defendant in any	09:25	24	to those subsidiaries?
09:22	25	litigation relating to SK Foods?	09:25	25	A. None.
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09:22	1	A. Yes, I have.	09:25	1	Q. Did you ever have contact with anyone who
09:22	2	Q. Can you tell me what the nature of that	09:25	2	worked for those subsidiaries?
09:22	3	litigation was?	09:25	3	A. Yes, I did.
09:22	4	A. Initially I was named as a defendant in a PACA	09:25	4	Q. Who did you have contact with?
09:22	5	claim, which was with the USDA PACA, meaning the	09:25	5	A. I had contact with Richard Lawrence, who was
09:22	6	Perishable Agricultural Commodities Act. I was named in	09:25	6	the managing director, and had met some employees of
09:22	7	litigation, Allied World and related entities versus SK	09:25	7	Cedenco throughout my career with SK Foods on an
09:23	8	Foods, it's an insurance claim.	09:26	8	acquaintance, colleague basis.
09:23	9	Q. Any others?	09:26	9	MR. CHRISTMAS: I'm going to mark some
09:23	10	A. No.	09:26	10	documents now.
09:23	11	Q. And with respect to the PACA litigation, is	09:26	11	MS. WOODRUFF: Robert, while you're doing that
09:23	12	that still ongoing, or is that resolved?	09:26	12	may I ask, the documents Ms. Crist provided, were they
09:23	13	A. No, it's resolved.	09:26	13	provided to all parties?
09:23	14	Q. And the Allied World litigation?	09:26	14	MR. NUTI: No. I just asked John the same
09:23	15	A. That's still ongoing.	09:26	15	question.
09:23	16	Q. Can you tell me who Julie Patton is?	09:26	16	MR. CHRISTMAS: Oh, okay. I thought that they
09:23	17	A. No.	09:26	17	were.
09:23	18	Q. Did you ever have any contact with Gary Perry's	09:26	18	MS. WOODRUFF: When can we expect them to be
09:23	19	office?	09:26	19	provided to us?
09:23	20	A. Yes, I have.	09:26	20	MR. CHRISTMAS: I expect I can do that today.
09:23	21	Q. Who's Mr. Perry?	09:26	21	MS. WOODRUFF: That would be great.
09:23	22	A. He is an estate attorney, estate planning --	09:27	22	MR. NUTI: I was going to ask, how many were
09:23	23	he's an attorney who I believe specializes in estate	09:27	23	there?
09:23	24	planning.	09:27	24	THE WITNESS: Like four. I have nothing really
09:23	25	Q. Okay. And what was the reason you had contact	09:27	25	for Cedenco.

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09:27	1 MR. CHRISTMAS: We could mark this as 7.	09:34	1 drive.
09:27	2 Why don't we just mark several. This is 8,	09:35	2 COURT REPORTER: What number is this?
09:28	3 this is 9, this is 10.	09:35	3 MR. CHRISTMAS: 72.
09:29	4 (Exhibits 7, 8, 9 and 10 were marked for	09:35	4 (Exhibit 72 was marked for identification.)
09:29	5 identification.)	09:35	5 BY MR. CHRISTMAS:
09:29	6 MR. CHRISTMAS: Sharp 963 is 9.	09:35	6 Q. Ms. Crist, the court reporter has handed you
09:29	7 MR. NUTI: I don't have that.	09:35	7 Exhibit 72 to your deposition. Do you recognize this
09:29	8 MR. CHRISTMAS: Here you go.	09:35	8 document?
09:29	9 MS. WOODRUFF: I've got all four.	09:35	9 A. Yes.
09:29	10 BY MR. CHRISTMAS:	09:35	10 Q. What is it?
09:29	11 Q. I'm just going to ask you, we've marked a	09:35	11 A. I provided you in response to the subpoena the
09:29	12 series of documents for identification to your	09:35	12 list of the following -- the five items that are listed,
09:29	13 deposition.	09:35	13 and then additional document locations where additional
09:29	14 Have you ever seen Exhibit 7 before?	09:35	14 documents may be held in accordance with the subpoena
09:29	15 A. Not that I'm aware of, no.	09:35	15 requirements.
09:29	16 Q. How about Exhibit 8?	09:35	16 Q. Okay. So you typed this up?
09:30	17 A. No.	09:35	17 A. Yes, I did.
09:30	18 Q. Exhibit 9?	09:35	18 Q. And this lists the contents of the thumb drive?
09:30	19 A. No.	09:35	19 A. Yes.
09:30	20 Q. Exhibit 10?	09:35	20 Q. So the first document, what does that document
09:30	21 A. No.	09:35	21 refer to there?
09:30	22 MR. CHRISTMAS: Okay. Let's mark some more.	09:35	22 A. Do you have it?
09:30	23 Let's mark these. This is 11, here is 12, 13, 14, 15.	09:35	23 Q. Number one? Do you know what it was, or do I
09:32	24 (Exhibits 11, 12, 13, 14 and 15 were marked for	09:35	24 have to show you?
09:32	25 identification.)	09:35	25 A. Articles of organization and EIN number with
Page 15		Page 17	
09:32	1 BY MR. CHRISTMAS:	09:36	1 the state for the formation of Monterey Peninsula
09:32	2 Q. Okay. Ms. Crist, the court reporter has handed	09:36	2 Farming.
09:32	3 you a series of documents numbered sequentially. We'll	09:36	3 Q. And what's the next one?
09:32	4 go through them.	09:36	4 A. I don't remember the document exactly. Do you
09:32	5 Have you ever seen Exhibit 11 before?	09:36	5 have it?
09:32	6 A. No.	09:36	6 Q. Yeah, I'm going to pull them out. I just
09:33	7 Q. How about Exhibit 12?	09:36	7 wondered if you could remember, to describe what they
09:33	8 A. No.	09:36	8 were.
09:33	9 Q. Exhibit 13?	09:36	9 I'll continue to pull those out, but if you
09:33	10 A. No.	09:36	10 could just go through and tell me what they were.
09:33	11 Q. Exhibit 14?	09:36	11 A. I basically looked through my records to see if
09:33	12 A. No.	09:36	12 I had anything related to the subpoena and the document
09:33	13 Q. Exhibit 15?	09:36	13 requests, or document production requests, so I'd have to
09:33	14 A. No.	09:36	14 look at number two and number three for clarification.
09:33	15 Q. Exhibit 16?	09:36	15 Number four is a flow chart that shows the
09:33	16 A. 16?	09:36	16 Salyer enterprises, meaning all of the entities under the
09:33	17 MR. NUTI: I haven't seen that one either.	09:37	17 Salyer organization, and it shows ownership interests or
09:33	18 MR. CHRISTMAS: Oh, sorry.	09:37	18 percentages to and from each entity, and ownership
09:33	19 Did it get marked?	09:37	19 interests back to the trust.
09:33	20 COURT REPORTER: No.	09:37	20 And number five, I believe, is a spreadsheet in
09:33	21 (Exhibit 16 was marked for identification.)	09:37	21 Excel that, again, shows some of the ownership interests
09:33	22 THE WITNESS: No.	09:37	22 and listing of the Salyer entities.
09:34	23 MR. CHRISTMAS: If we could mark -- I'm going	09:37	23 MR. CHRISTMAS: This is 55 and 56, and 52.
09:34	24 to go out of order so the witness can identify just a	09:37	24 (Exhibits 52, 55 and 56 were marked for
09:34	25 handful of documents that were produced from the thumb	09:38	25 identification.)

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09:38	1 THE WITNESS: These actually go together.	09:41	1 A. Yes, my office moved. My physical office moved
09:38	2 BY MR. CHRISTMAS:	09:41	2 from Lemoore to Monterey. Ragsdale Drive.
09:38	3 Q. Ms. Crist, the court reporter has just handed	09:41	3 Q. And in what form was the file maintained? Was
09:38	4 you Exhibits 55, 51 and 52, I believe?	09:41	4 it in hard copy form, or electronic form, or both?
09:38	5 MS. WOODRUFF: No. 55, 52 and 56.	09:41	5 A. Both.
09:39	6 MR. CHRISTMAS: Okay. What did I do with 56?	09:41	6 Q. Was it maintained on an individual PC, or on
09:39	7 Can I see?	09:41	7 the network?
09:39	8 THE WITNESS: Mm-hmm.	09:41	8 A. It was maintained on an individual PC.
09:39	9 BY MR. CHRISTMAS:	09:41	9 Q. Okay. Was that your PC?
09:39	10 Q. Let's look at 55 first. Does that relate to	09:41	10 A. Yes, it was.
09:39	11 the first numbered item on your --	09:41	11 MR. CHRISTMAS: This is 73.
09:39	12 A. All three of them relate to the first item.	09:42	12 (Exhibit 73 was marked for identification.)
09:39	13 Q. And that's the first item on Exhibit 72?	09:42	13 BY MR. CHRISTMAS:
09:39	14 A. Yes.	09:42	14 Q. Is this the second document on your list?
09:39	15 Q. In that space --	09:42	15 A. Yes.
09:39	16 A. It's part of the articles of organization, so	09:42	16 Q. Can you tell me what this is.
09:39	17 actually 55 and 56 go together.	09:42	17 A. Do you want me to read it? General Assignment
09:39	18 Q. That's what I thought.	09:42	18 Transfer of Shares of SK Foods Australia Ltd.
09:39	19 A. And 52 is the EIN that was assigned to Monterey	09:42	19 Q. Do you know what the purpose of this document
09:39	20 Peninsula Farming.	09:42	20 was?
09:39	21 MR. CHRISTMAS: We may have called out the	09:42	21 A. I really don't, it was just included in some of
09:40	22 wrong number when I passed those around. Do you want to	09:42	22 the corporate records that I had.
09:40	23 show --	09:42	23 Q. Were you involved in its preparation?
09:40	24 THE WITNESS: 52?	09:42	24 A. No, I was not.
09:40	25 MR. CHRISTMAS: Is the IRS document.	09:42	25 Q. Do you recall having any discussions about this
Page 19		Page 21	
09:40	1 And what else do you have in your hand?	09:42	1 document?
09:40	2 THE WITNESS: 55 and 56 are the articles of	09:42	2 A. No. Huh-uh.
09:40	3 organization for the state of California for the LLC, for	09:42	3 Q. And that is item number two, then. Is that
09:40	4 Monterey Peninsula Farming.	09:43	4 correct?
09:40	5 MR. CHRISTMAS: Does everyone have those?	09:43	5 A. Yes, it is.
09:40	6 MS. WOODRUFF: Yes.	09:43	6 MR. CHRISTMAS: I think this probably should
09:40	7 MR. NUTI: Yes.	09:43	7 have been read in conjunction with that. This is the
09:40	8 BY MR. CHRISTMAS:	09:43	8 second page. 74.
09:40	9 Q. Is that --	09:43	9 (Exhibit 74 was marked for identification.)
09:40	10 A. That's item number one.	09:43	10 THE WITNESS: Can I just add that this looks
09:40	11 Q. What's the last?	09:44	11 like it's the same item as item number 9, but item number
09:40	12 A. Item number two --	09:44	12 9 is executed, where the one that I provided was not.
09:40	13 Q. No, I just mean let me see the last of those.	09:44	13 They look the same to me.
09:40	14 Why did you have item number 1 on your list?	09:44	14 BY MR. CHRISTMAS:
09:40	15 A. For corporate secretary I maintained a file for	09:44	15 Q. But I believe you said you'd never seen item --
09:40	16 each of the California entities, or California, I should	09:44	16 rather, we'll call it "exhibit." Exhibit 9.
09:41	17 say "domestic," meaning U.S. entities, and so I was given	09:44	17 A. I don't remember it, because it would have been
09:41	18 that as just for record-keeping.	09:44	18 before I was assigned -- I don't remember it being
09:41	19 Q. And where did you maintain the corporate	09:44	19 executed. It may have just been in a file that I had
09:41	20 secretarial file?	09:44	20 with regard to another entity. Because I didn't maintain
09:41	21 A. Initially they were in Lemoore, California at	09:44	21 corporate records for any of the international entities.
09:41	22 the SK Foods plant, physical plant location, and then	09:44	22 Q. You did not?
09:41	23 transferred to the 200 -- what was that address? In	09:44	23 A. No, I did not.
09:41	24 Monterey. I can't remember the name of the address.	09:44	24 (Exhibit 75 was marked for identification.)
09:41	25 Q. So did you move your office to Monterey?	09:44	25 ///

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09:44	1 BY MR. CHRISTMAS:	09:47	1 document?
09:44	2 Q. Let me move to 75. I haven't located -- what	09:47	2 A. No.
09:45	3 item is that on your -- I have to show it to you first.	09:47	3 Q. Do you know who prepared it?
09:45	4 A. So again, this attachment goes with this one,	09:47	4 A. Wayne Boos.
09:45	5 right? As the same as item 9, Exhibit 9, I'm sorry.	09:47	5 Q. And do you know why you ended up with a copy of
09:45	6 Q. For clarity of the record, you've been -- I	09:47	6 it on your thumb drive?
09:45	7 handed you Exhibit 73, and then I handed you Exhibit 74.	09:47	7 A. Again, as it related to supporting the
09:45	8 A. Right.	09:48	8 bankruptcy estate, and then also I managed lines of
09:45	9 Q. It was my belief that these since they were	09:48	9 insurance -- let me back up. So I've had a copy of this
09:45	10 sequentially numbered and it is an exhibit, that they	09:48	10 probably since '08. There was another version, I
09:45	11 went together.	09:48	11 believe, before this one. There are probably multiple
09:45	12 A. Yep. Well, that's what it looks like when you	09:48	12 versions before this one. And I supported all lines of
09:45	13 provided 9, that they're together.	09:48	13 insurance, and so just to make sure that we had the
09:45	14 Q. But you don't have any independent	09:48	14 appropriate entities insured under the GL policies, et
09:45	15 understanding of the order of these documents?	09:48	15 cetera, as named entities, I maintained a copy of this as
09:45	16 A. I don't. And like I say, they may have been in	09:48	16 well.
09:45	17 another entity record, such as SKPM corp because of the	09:48	17 Q. Did you ever give any input as to changes to be
09:46	18 reference there, but I don't have any working knowledge	09:48	18 made to that document?
09:46	19 of its preparation, or the execution of Scott's	09:48	19 A. No, none.
09:46	20 signature, or anything like that.	09:48	20 Q. And does this correspond to an item on your
09:46	21 MR. CHRISTMAS: Okay. Do you have 75? Have we	09:48	21 list?
09:46	22 handed out 75?	09:48	22 A. Item number four.
09:46	23 MR. SHEAHAN: I have.	09:48	23 Q. All right. We'll get to item number three at
09:46	24 BY MR. CHRISTMAS:	09:48	24 some point here, but I just wanted to get those out.
09:46	25 Q. I believe this is from your production. Can	09:49	25 Who was Mr. Pinter? Chad Pinter? Do you
Page 23		Page 25	
09:46	1 you identify this document?	09:49	1 recall?
09:46	2 A. Yes, this is an Excel spreadsheet that I	09:49	2 A. He was hired as CFO for a short period of time.
09:46	3 prepared showing -- actually, I think I remember it being	09:49	3 Q. Did you report to him?
09:46	4 e-mailed back and forth between Gary Perry and myself,	09:49	4 A. No, I did not.
09:46	5 just trying to support the SK Foods LP and related entity	09:49	5 Q. As corporate secretary, were you ever involved
09:46	6 bankruptcy in 2009, just to help clarify the entities,	09:50	6 in the drafting of any of the documents over which you
09:46	7 and dates of incorporation, and EIN numbers, et cetera.	09:50	7 were the custodian?
09:46	8 BY MR. CHRISTMAS:	09:50	8 A. Possibly.
09:46	9 Q. Did Mr. Perry give input to this document?	09:50	9 Q. Do you have any individual recollection of
09:47	10 A. Yes.	09:50	10 assisting in drafting?
09:47	11 Q. And then I take it you also gave input to this	09:50	11 A. What type of documents? Can you be more
09:47	12 document?	09:50	12 specific?
09:47	13 A. Yes.	09:50	13 Q. Well, like any documents that would convey
09:47	14 Q. And does this document correspond to one of the	09:50	14 ownership interest of any of the entities to any other
09:47	15 items on your list?	09:50	15 entity?
09:47	16 A. It is item number five.	09:50	16 A. I do remember typing drafts of resolutions,
09:47	17 MR. CHRISTMAS: Let's do this 66.	09:50	17 adopting resolutions after, say, a board of directors
09:47	18 (Exhibit 66 was marked for identification.)	09:50	18 meeting. Minutes, agendas, things like that as it
09:47	19 BY MR. CHRISTMAS:	09:50	19 related to board of directors meetings for SKPM corp
09:47	20 Q. The court reporter has handed you Exhibit 66 to	09:50	20 only.
09:47	21 your deposition. Do you recognize this document?	09:50	21 Q. Okay. So you attended the board meetings?
09:47	22 A. Yes.	09:51	22 A. Yes, I did. Two.
09:47	23 Q. Can you tell me what it is?	09:51	23 Q. For two entities?
09:47	24 A. It is the Salyer Enterprises Flow Chart.	09:51	24 A. No, two board of directors meetings.
09:47	25 Q. And were you involved in preparing this	09:51	25 Q. And what boards of directors were those?

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<p>09:51 1 A. Dates, or?</p> <p>09:51 2 Q. Let me back up. You only ever attended two</p> <p>09:51 3 meetings? Is that what you mean?</p> <p>09:51 4 A. Yes.</p> <p>09:51 5 Q. And you took down the minutes for those</p> <p>09:51 6 meetings?</p> <p>09:51 7 A. Yes, I did.</p> <p>09:51 8 Q. And then you typed them up?</p> <p>09:51 9 A. Mm-hmm.</p> <p>09:51 10 Q. Now, I was referring more to, I guess what we</p> <p>09:51 11 could call legal documents, or transaction documents that</p> <p>09:51 12 might change the corporate ownership of the entities</p> <p>09:51 13 themselves.</p> <p>09:51 14 A. I don't recall changing ownership. I remember</p> <p>09:51 15 typing up, like I said, resolutions, but I would need to</p> <p>09:51 16 look at them to remember.</p> <p>09:51 17 Q. Did you ever assist Mr. Perry in drafting any</p> <p>09:51 18 legal transaction documents?</p> <p>09:51 19 A. Not that I can recall.</p> <p>09:51 20 Q. Did you ever give any comments to Mr. Perry on</p> <p>09:51 21 any legal transaction documents that he had prepared?</p> <p>09:51 22 A. Not that I can recall.</p> <p>09:52 23 MR. CHRISTMAS: This is 26.</p> <p>09:52 24 (Exhibit 26 was marked for identification.)</p> <p>09:52 25 ///</p>	<p>09:53 1 MR. SHEAHAN: So you've all got it.</p> <p>09:54 2 MR. CHRISTMAS: 27.</p> <p>09:54 3 (Exhibit 27 was marked for identification.)</p> <p>09:54 4 BY MR. CHRISTMAS:</p> <p>09:54 5 Q. Just one housekeeping question, when you left</p> <p>09:54 6 SK Foods, did you retain your computer, or did you leave</p> <p>09:54 7 it at SK Foods?</p> <p>09:54 8 A. I retained my laptop for a period of time while</p> <p>09:54 9 I supported the bankruptcy estate, and then returned it</p> <p>09:54 10 to the bankruptcy estate through Shondale Seymour, and</p> <p>09:54 11 then she actually turned it over to Olam Tomato Company,</p> <p>09:54 12 I don't know their legal name, who actually purchased all</p> <p>09:54 13 of the assets from the estate.</p> <p>09:54 14 Q. The court reporter has handed you Exhibit 27 to</p> <p>09:55 15 your deposition. Do you recognize this series of</p> <p>09:55 16 e-mails?</p> <p>09:55 17 A. I'm looking through it right now. Lisac@first</p> <p>09:55 18 organization.com, I don't recognize that e-mail address</p> <p>09:55 19 at all. I've never held an e-mail address that's</p> <p>09:55 20 lisac@first organization.com.</p> <p>09:55 21 Q. Do you know if --</p> <p>09:55 22 A. And I don't remember this e-mail.</p> <p>09:55 23 Q. Do you know if any outbound e-mails from SK</p> <p>09:55 24 Foods might have had a different address?</p> <p>09:55 25 A. Not that I'm aware of. It would have been --</p>
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<p>09:52 1 BY MR. CHRISTMAS:</p> <p>09:52 2 Q. Ms. Crist, the court reporter has handed you</p> <p>09:52 3 Exhibit 26 to your deposition. Do you recognize this</p> <p>09:52 4 document?</p> <p>09:52 5 A. I don't remember it. Is it a part of a loan,</p> <p>09:52 6 like a loan transaction?</p> <p>09:52 7 Q. If you look at the lower right, it has a number</p> <p>09:52 8 on it.</p> <p>09:52 9 A. Okay.</p> <p>09:52 10 Q. And I believe, is this number three on your</p> <p>09:53 11 list?</p> <p>09:53 12 A. Could be. Yes. This is what I provided you in</p> <p>09:53 13 that, right?</p> <p>09:53 14 Q. I'm asking you.</p> <p>09:53 15 A. Like I said, I just did a general search, so</p> <p>09:53 16 anything that would have had anything related to the</p> <p>09:53 17 subpoena, I provided.</p> <p>09:53 18 Q. I believe that this is it.</p> <p>09:53 19 A. Okay. Yes, SSC&L trust.</p> <p>09:53 20 Q. And it appears to be the only page that we</p> <p>09:53 21 haven't hit in your production.</p> <p>09:53 22 A. Yes, mm-hmm.</p> <p>09:53 23 MR. SHEAHAN: So that means everyone's got each</p> <p>09:53 24 page of the production?</p> <p>09:53 25 MR. CHRISTMAS: Yes.</p>	<p>09:55 1 Q. What was your address?</p> <p>09:55 2 A. It was lisac@skfoods.com. I don't think it was</p> <p>09:55 3 lcrist, I believe it was lisac@skfoods.com.</p> <p>09:55 4 Q. Well, turning to the substance of this series</p> <p>09:55 5 of e-mails, the one on the bottom is from Nick Frankish.</p> <p>09:56 6 Do you know who he was?</p> <p>09:56 7 A. Yes.</p> <p>09:56 8 Q. What was his role?</p> <p>09:56 9 A. He was the CFO for Cedenco.</p> <p>09:56 10 Q. And have you had a chance to read this e-mail?</p> <p>09:56 11 A. I'm reading it right now.</p> <p>09:56 12 I don't remember the e-mail.</p> <p>09:56 13 Q. Apart from not remembering the e-mail, how</p> <p>09:57 14 about the substance of the e-mail, the topics that are</p> <p>09:57 15 addressed there? Well, let's start with do you recall</p> <p>09:57 16 whether there were any changes in ownership of the</p> <p>09:57 17 Australian and New Zealand companies while you worked for</p> <p>09:57 18 SK Foods?</p> <p>09:57 19 A. I was not involved in their -- I was not</p> <p>09:57 20 involved in the Cedenco operations at all. I don't</p> <p>09:57 21 recall any conversations as it related to any ownership</p> <p>09:57 22 changes or anything like that for Cedenco.</p> <p>09:57 23 Q. Do you know if you received for storage in the</p> <p>09:57 24 corporate secretarial file any documents that purported</p> <p>09:57 25 to effect changes in the ownership of the Australia and</p>

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09:58	1 New Zealand companies?	10:01	1 Q. I asked you at the beginning of the deposition
09:58	2 A. The only things that I had were what I	10:02	2 if you remembered the name Julie Patton.
09:58	3 provided.	10:02	3 A. Mm-hmm.
09:58	4 Q. No, I mean in the corporate secretarial file at	10:02	4 Q. Do you see that name there at the top of
09:58	5 SK Foods.	10:02	5 Exhibit 39, the e-mail?
09:58	6 A. Would I have had what?	10:02	6 A. I do.
09:58	7 Q. Would you have been the person to whom legal	10:02	7 Q. By looking at that e-mail address, does that
09:58	8 documents that effected changes in ownership of the	10:02	8 refresh your recollection as to who she was?
09:58	9 Australia and New Zealand companies would have been sent?	10:02	9 A. It appears that she worked for Gary Perry.
09:58	10 A. I don't believe so, but I didn't -- you know, I	10:02	10 Q. Do you have any independent recollection of
09:58	11 maintained -- basically each entity had a formal binder	10:02	11 dealings with her?
09:58	12 that had all the AOs and, you know, Articles of	10:02	12 A. I didn't correspond with her very often. It
09:58	13 Incorporation, Articles of Organization, EIN numbers,	10:02	13 would have been few and far between as far as my
09:58	14 various resolutions, et cetera, et cetera. And then with	10:02	14 communications with her.
09:58	15 the government investigation, all of those records were	10:02	15 Q. Now, if I could draw your attention to the
09:58	16 taken, and so there were some records that Gary Perry was	10:02	16 attachment to this e-mail, do you recall -- well, first
09:58	17 able to reproduce so that we could continue to run the	10:02	17 do you recall receiving this e-mail and the attachments?
09:58	18 business.	10:02	18 A. It appears that it was e-mailed to me.
09:59	19 So it's very difficult for me to pinpoint one	10:02	19 Q. Do you have any independent recollection of
09:59	20 record versus another, because after all of the formal	10:02	20 that?
09:59	21 corporate records were taken as a part of the	10:02	21 A. I guess so. If you're asking about the initial
09:59	22 investigation, they were never returned. So they're	10:03	22 transaction in its entirety, I don't. I mean, there
09:59	23 still in the government's possession, Department of	10:03	23 were -- my days were long, so.
09:59	24 Justice.	10:03	24 Q. I just mean, do you remember receiving this
09:59	25 So basically, Gary Perry provided manila	10:03	25 e-mail? Does this refresh your recollection that you
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09:59	1 folders with some basic corporate records just to, you	10:03	1 received this e-mail?
09:59	2 know, support the business basically.	10:03	2 A. Yes, yes.
09:59	3 So if you're asking me if I have specific	10:03	3 Q. Now, do you know why you are receiving this
09:59	4 ownership-related documents in my possession, I don't	10:03	4 e-mail and attachment?
09:59	5 believe that I do, or that I remember having in those	10:03	5 MS. WOODRUFF: Objection. Calls for
09:59	6 folders. Because I received those corporate records in	10:03	6 speculation, lacks foundation.
09:59	7 December of 2007 after the first board of directors	10:03	7 BY MR. CHRISTMAS:
09:59	8 meeting that I attended and was appointed as corporate	10:03	8 Q. Did you have an understanding?
09:59	9 secretary. Those records came into my possession then,	10:03	9 MS. WOODRUFF: Same objection.
10:00	10 and in '08 the government raid happened in April, so I	10:03	10 THE WITNESS: Yeah...
10:00	11 only had the formal records for a period of maybe five	10:03	11 BY MR. CHRISTMAS:
10:00	12 months.	10:03	12 Q. You can answer. That's just part of the
10:00	13 Does that make sense?	10:03	13 process.
10:00	14 Q. I understand your answer.	10:03	14 A. It must have -- somebody must have asked me or
10:00	15 A. So I had nothing for a period of time after the	10:03	15 requested of me to try and get records, and I probably
10:00	16 government raid, and then requested of Gary Perry, "Hey,	10:03	16 went to Gary Perry and said "Hey, do you have this," in
10:00	17 do you have anything so we can support banking	10:03	17 connection with providing or supporting a request from
10:00	18 transactions or anything," as it related to needing --	10:04	18 another person.
10:00	19 trying to support the business basically.	10:04	19 Q. But these appear to be unsigned?
10:00	20 MR. CHRISTMAS: Okay. This is 39.	10:04	20 A. Mm-hmm.
10:00	21 (Exhibit 39 was marked for identification.)	10:04	21 Q. So apart from this document, did you ever have
10:00	22 BY MR. CHRISTMAS:	10:04	22 occasion to be asked to seek signatures for documents?
10:01	23 Q. Ms. Crist, the court reporter has handed you	10:04	23 A. I did seek, or I should say "obtain" signatures
10:01	24 Exhibit 39 to your deposition.	10:04	24 for various records as it related to, like, loans, so if
10:01	25 A. Okay.	10:04	25 the company were going through a loan, or a new loan, or

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<p>10:04 1 a current loan, restructuring maybe, I would have helped</p> <p>10:04 2 support that through producing records and getting</p> <p>10:04 3 signatures and having things FedExed back and forth</p> <p>10:04 4 between the banks and the company, just basically as an</p> <p>10:04 5 admin, purely in an admin role, just being that liaison</p> <p>10:05 6 between, you know, the CFO, Scott, the banks, et cetera.</p> <p>10:05 7 Q. It says -- Ms. Patton writes "Lisa attached the</p> <p>10:05 8 two forms we discussed on Wednesday." Do you recall the</p> <p>10:05 9 telephone conversation that you had?</p> <p>10:05 10 A. No, I do not, honestly.</p> <p>10:05 11 Q. Do you know what you did after you received</p> <p>10:05 12 this e-mail?</p> <p>10:05 13 A. No, I don't.</p> <p>10:05 14 Q. Do you recall if you sent these documents to</p> <p>10:05 15 anyone for signature?</p> <p>10:05 16 A. I don't even remember the transaction, to be</p> <p>10:05 17 honest with you.</p> <p>10:05 18 Q. When you say "the transaction," is that --</p> <p>10:05 19 A. Meaning the request for the records, who I sent</p> <p>10:05 20 them to. I don't remember what the business name was, if</p> <p>10:05 21 it was in support of somebody needing records for</p> <p>10:06 22 whatever business purpose, I don't even remember what the</p> <p>10:06 23 business purpose was.</p> <p>10:06 24 MR. CHRISTMAS: Let's mark 40.</p> <p>10:06 25 (Exhibit 40 was marked for identification.)</p>	<p>10:08 1 an independent recollection of receiving this e-mail?</p> <p>10:08 2 A. I don't remember the business transaction. I</p> <p>10:08 3 don't.</p> <p>10:08 4 Q. Did you ever travel to New Zealand or Australia</p> <p>10:08 5 in connection with your position?</p> <p>10:08 6 A. I did twice.</p> <p>10:08 7 Q. And when did you do that?</p> <p>10:08 8 A. I can give you the years. I don't remember</p> <p>10:09 9 time frame.</p> <p>10:09 10 Q. Whatever you remember.</p> <p>10:09 11 A. Okay. The first trip I believe was in 2007,</p> <p>10:09 12 and the second was in 2008.</p> <p>10:09 13 Q. Turning to the 2007 trip, what was the reason</p> <p>10:09 14 that you made the trip?</p> <p>10:09 15 A. I was invited to go, just from -- each year</p> <p>10:09 16 Scott Salyer traveled to the Cedenco entities probably</p> <p>10:09 17 two or three times a year, and each time he would take a</p> <p>10:09 18 different member of senior management on most occasions,</p> <p>10:09 19 and I was new, new in my role as VP of HR and EHS, and so</p> <p>10:10 20 I went purely to visit what we called our "sister</p> <p>10:10 21 companies," and so it was just basically an opportunity</p> <p>10:10 22 for me to get to know the business and to meet others in</p> <p>10:10 23 our organization with the international companies.</p> <p>10:10 24 Q. But you didn't have specific responsibilities</p> <p>10:10 25 to carry out in Australia?</p>
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<p>10:06 1 BY MR. CHRISTMAS:</p> <p>10:06 2 Q. Ms. Crist, the court reporter has handed you</p> <p>10:06 3 Exhibit 40 to your deposition, which is -- we looked at</p> <p>10:06 4 Exhibit 39, which was an e-mail with attachments of</p> <p>10:06 5 March 28, 2008 at 11:49 a.m., and here again, this is the</p> <p>10:06 6 same day, March 28, and this is now 2:35 p.m.</p> <p>10:07 7 Do you have any recollection as to -- if you</p> <p>10:07 8 could look at the documents, I believe they are the same</p> <p>10:07 9 documents, why she would have sent it to you twice?</p> <p>10:07 10 MS. WOODRUFF: Objection. Calls for</p> <p>10:07 11 speculation, lacks foundation.</p> <p>10:07 12 THE WITNESS: They appear to be the same. I</p> <p>10:07 13 don't know why they would have been e-mailed twice.</p> <p>10:07 14 BY MR. CHRISTMAS:</p> <p>10:07 15 Q. And would it be fair to say that just as with</p> <p>10:07 16 the e-mail and attachments that were sent in the morning,</p> <p>10:08 17 that you don't have a recollection as to what you did, if</p> <p>10:08 18 anything, with these documents after receipt?</p> <p>10:08 19 A. I do not --</p> <p>10:08 20 MS. WOODRUFF: Sorry. Objection. Assumes</p> <p>10:08 21 facts not in evidence that it was received.</p> <p>10:08 22 BY MR. CHRISTMAS:</p> <p>10:08 23 Q. Did you receive these e-mails, Exhibit 40?</p> <p>10:08 24 A. That is my e-mail address, lisac@skfoods.com.</p> <p>10:08 25 Q. Apart from looking at the document, do you have</p>	<p>10:10 1 A. No.</p> <p>10:10 2 Q. Or in New Zealand?</p> <p>10:10 3 A. No.</p> <p>10:10 4 Q. With whom did you meet, if anyone, on this</p> <p>10:10 5 trip?</p> <p>10:10 6 A. I met a lot of people. I toured the</p> <p>10:10 7 facilities, I toured each facility, I met a lot of</p> <p>10:10 8 people. We had a dinner where we invited the plant</p> <p>10:10 9 employees.</p> <p>10:10 10 Q. And in 2008 you traveled again?</p> <p>10:10 11 A. I traveled with Scott Salyer's daughter,</p> <p>10:11 12 Stephanie Salyer, and we traveled commercial, not</p> <p>10:11 13 privately on the company's, you know, the company</p> <p>10:11 14 airplane, jet.</p> <p>10:11 15 So I traveled with Stephanie Salyer, and it was</p> <p>10:11 16 an opportunity for her to get to see the other entities,</p> <p>10:11 17 and I accompanied her and made those introductions, and</p> <p>10:11 18 she and I did plant tours and things like that, and it</p> <p>10:11 19 was an opportunity for her. She had taken another role</p> <p>10:11 20 in the organization, so again, it was just a</p> <p>10:11 21 meet-and-greet and to introduce her to the business as</p> <p>10:11 22 well.</p> <p>10:11 23 Q. Was Mr. Salyer --</p> <p>10:11 24 A. He was there during that time, but we didn't</p> <p>10:11 25 travel with him.</p>

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<p>10:11 1 Q. And in the 2007 trip did you go to New Zealand 10:12 2 and Australia? 10:12 3 A. Yes. 10:12 4 Q. And in 2008, New Zealand and Australia? 10:12 5 A. Yes. 10:12 6 Q. Other than plant tours and dinners, et cetera, 10:12 7 were there any business meetings as part of the 2008 10:12 8 trip? 10:12 9 A. I did attend a -- they always -- that's 10:12 10 speculation. Richard Lawrence and Nick Frankish and the 10:12 11 plant manager or plant operations director, I don't know 10:12 12 his exact title, presented a capital investment wish list 10:12 13 per se, like, you know, what they would hope to do as far 10:12 14 as expansion of the operations, or capital improvements 10:12 15 for the various plants. They had acquired a new squash 10:12 16 company in Ohakune, I believe. Had Mountain Carrots in 10:12 17 another location, and so I attended those meetings. 10:13 18 MR. CHRISTMAS: Mark this as 42. 10:13 19 (Exhibit 42 was marked for identification.) 10:13 20 BY MR. CHRISTMAS: 10:13 21 Q. Ms. Crist, the court reporter has handed you 10:13 22 Exhibit 42 to your deposition, which is a series of 10:13 23 e-mails. The earliest e-mail appears to be an e-mail 10:13 24 dated April 1, 2008 at 7:25 p.m. 10:13 25 A. Mm-hmm.</p>	<p>10:15 1 I wasn't sure because I wasn't an officer of the 10:15 2 Cedenco-related entities. And so I did sign one 10:15 3 document, I don't remember what it was, but it turned out 10:15 4 that I didn't have the authority to sign it anyway, and 10:15 5 Scott had to sign them. 10:15 6 Q. Do you recall what the nature of the resolution 10:15 7 was? 10:15 8 A. I don't, unless you have it. 10:15 9 Q. Were you involved in the preparation of any of 10:15 10 the resolutions relating to -- 10:15 11 A. For Cedenco? 10:15 12 Q. You have to wait for me to finish so the court 10:15 13 reporter can take us down. 10:15 14 A. I'm sorry. 10:15 15 Q. -- the resolutions that are mentioned in this 10:15 16 e-mail, or referred to? 10:16 17 A. The resolution stated in the e-mail isn't 10:16 18 specified, so I wouldn't know without looking at it. 10:16 19 Q. Do you recall the significance of the two dates 10:16 20 that are in this e-mail, November 1, 2007 versus 10:16 21 November 1, 2006? 10:16 22 MS. WOODRUFF: Objection. Calls for 10:16 23 speculation, lacks foundation and also assumes facts not 10:16 24 in evidence as to their significance. 10:16 25 ///</p>
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<p>10:13 1 Q. Military time there. 10:13 2 And the second e-mail appears to be one from 10:13 3 Gary Perry dated April 2, 2008 at 6:37 a.m. 10:13 4 Do you recognize these series of e-mails? 10:13 5 A. I do remember a conversation with Nick. I 10:13 6 remember, and I can't be specific specific, but I do 10:14 7 remember Nick, they were talking about -- I was in a 10:14 8 meeting and a sidebar conversation was occurring where 10:14 9 Nick was talking about they were going through their 10:14 10 audit, their annual audit, and he needed to have Scott 10:14 11 sign some documents and asked me if I were going to see 10:14 12 Scott, if I could have him sign some documents related to 10:14 13 their audit. 10:14 14 Q. Okay. Do you know the nature of the documents? 10:14 15 A. I can't recall specifically unless you have 10:14 16 something that you want me to review. 10:14 17 Q. Do you have a recollection about any 10:14 18 resolutions relating to the transfer of ownership of the 10:14 19 Australian or New Zealand companies? 10:14 20 A. I don't remember what the resolutions were, I 10:14 21 just remember Nick needing Scott to have something signed 10:14 22 in response to his audit, the needs for his audit, and 10:14 23 wanted to -- there was one document in particular that he 10:15 24 asked me if I had authority to sign, and I told him I 10:15 25 wasn't sure, as corporate secretary, and I told him that</p>	<p>10:16 1 BY MR. CHRISTMAS: 10:16 2 Q. You can answer. I'm just asking if you know 10:16 3 their significance, what they connect to. 10:16 4 A. I don't. 10:16 5 Q. Did you ultimately obtain signatures of any 10:17 6 documents that were in furtherance of this e-mail? 10:17 7 A. During this trip I don't believe that I was 10:17 8 able to get Scott's signature. I think that he signed 10:17 9 them when he was back in the U.S., whatever they were. I 10:17 10 may have carried an envelope with the documents that Nick 10:17 11 needed signed, but I don't remember Scott actually 10:17 12 signing them during that trip. I think it was handled 10:17 13 when he got back to the states. 10:17 14 Q. So do you know when he got back to the states? 10:17 15 A. No, I don't even remember the exact time of the 10:17 16 trip. 10:17 17 Q. Did his dates of travel overlap exactly with 10:18 18 yours, or were they different? 10:18 19 A. During this trip they would have been different 10:18 20 because Stephanie and I traveled separately. 10:18 21 Q. But on the first trip you were on the corporate 10:18 22 plane? 10:18 23 A. Yes, I was. 10:18 24 MR. CHRISTMAS: This is 44. 10:18 25 (Exhibit 44 was marked for identification.)</p>

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<p>10:18 1 BY MR. CHRISTMAS:</p> <p>10:18 2 Q. Ms. Crist, the court reporter has handed you</p> <p>10:18 3 Exhibit 44 to your deposition. Do you recognize this</p> <p>10:19 4 document?</p> <p>10:19 5 A. Yes, I do.</p> <p>10:19 6 Q. Can you tell me what it is.</p> <p>10:19 7 A. Hang on one second. Let me read it.</p> <p>10:19 8 It is basically the power of attorney.</p> <p>10:19 9 Q. Okay. What's your understanding of the reason</p> <p>10:19 10 that you were granted power of attorney?</p> <p>10:19 11 MS. WOODRUFF: Objection. Calls for</p> <p>10:19 12 speculation, lacks foundation.</p> <p>10:19 13 THE WITNESS: Scott was traveling to a country,</p> <p>10:19 14 and I don't remember the -- I believe it was Turkey and a</p> <p>10:19 15 couple other countries. It was like an annual tomato</p> <p>10:19 16 conference, and then he was doing some other traveling</p> <p>10:19 17 outside of that, and there was one country that was,</p> <p>10:19 18 like, at war, and we were kind of talking about "What if</p> <p>10:20 19 you died" type thing, and were kidnapped as part of, you</p> <p>10:20 20 know, kidnapping a rich American and holding him -- I</p> <p>10:20 21 don't know.</p> <p>10:20 22 He was traveling abroad to some various</p> <p>10:20 23 countries that weren't -- Columbia I think was one of</p> <p>10:20 24 them too, that were not entirely safe. So Gerard Rose</p> <p>10:20 25 and Scott and I talked. Basically they contacted me and</p>	<p>10:22 1 I'm sorry. Strike that. Gerard Rose.</p> <p>10:22 2 And I was gracious that he felt very high -- he</p> <p>10:22 3 felt highly of me I guess, but I was no way equipped to</p> <p>10:22 4 manage the company if he were to die. It was kind of --</p> <p>10:22 5 I hate to say it was a joke. I understand this is a</p> <p>10:22 6 legal document, but it really never came into play.</p> <p>10:22 7 Q. Were you ever granted a power of attorney by</p> <p>10:22 8 anyone else while you worked at SK Foods?</p> <p>10:22 9 A. No.</p> <p>10:23 10 MR. CHRISTMAS: This is 53, this is 54.</p> <p>10:23 11 (Exhibits 53 and 54 were marked for</p> <p>10:23 12 identification.)</p> <p>10:23 13 THE WITNESS: Is there a reason why it's so</p> <p>10:23 14 cold in this office? Is that on purpose?</p> <p>10:24 15 MR. CHRISTMAS: And dark.</p> <p>10:24 16 THE WITNESS: I'm freezing to death.</p> <p>10:24 17 BY MR. CHRISTMAS:</p> <p>10:24 18 Q. Ms. Crist, the court reporter has handed you</p> <p>10:24 19 Exhibit 53 and 54 to your deposition. Have you ever seen</p> <p>10:24 20 Exhibit 53?</p> <p>10:24 21 A. I'm not aware of these documents.</p> <p>10:24 22 Q. And so that includes also 54?</p> <p>10:24 23 A. Yes.</p> <p>10:25 24 MR. CHRISTMAS: 67.</p> <p>10:25 25 (Exhibit 67 was marked for identification.)</p>
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<p>10:20 1 Gerard said "Hey, Scott's going to be doing this</p> <p>10:20 2 traveling for the next three weeks." And it was a very</p> <p>10:20 3 short period of time, I can tell you that, and he</p> <p>10:20 4 appointed me power of attorney, just to make very</p> <p>10:20 5 low-level business decisions during that time, and</p> <p>10:20 6 basically to support his estate if he were to die, to be</p> <p>10:21 7 pretty blunt, as it related to his daughters. Because I</p> <p>10:21 8 formed a close relationship with Stephanie. Not so much</p> <p>10:21 9 Caroline, I didn't get to know her that well, but with</p> <p>10:21 10 Stephanie I did, so that's how that came about.</p> <p>10:21 11 BY MR. CHRISTMAS:</p> <p>10:21 12 Q. Do you know if this power of attorney was ever</p> <p>10:21 13 revoked?</p> <p>10:21 14 A. God, I hope so. It was only during the time</p> <p>10:21 15 that he was traveling to those various countries, and it</p> <p>10:21 16 was like a two- or three-week...</p> <p>10:21 17 Q. Do you know why he chose you?</p> <p>10:21 18 MS. WOODRUFF: Objection. Calls for</p> <p>10:21 19 speculation, lacks foundation.</p> <p>10:21 20 BY MR. CHRISTMAS:</p> <p>10:21 21 Q. If you have an understanding.</p> <p>10:21 22 A. I believe that he trusted me, but honestly, I</p> <p>10:22 23 don't -- it would be speculation, because I don't know</p> <p>10:22 24 from Scott. And I've heard, and my communications with</p> <p>10:22 25 regard to this were actually from Gary Perry -- I mean,</p>	<p>10:25 1 BY MR. CHRISTMAS:</p> <p>10:25 2 Q. Ms. Crist, the court reporter has handed you</p> <p>10:25 3 Exhibit 67 to your deposition. Have you ever seen this</p> <p>10:25 4 document?</p> <p>10:25 5 A. I did as part of a loan transaction, and that</p> <p>10:25 6 was only to organize the documents and get them FedExed</p> <p>10:25 7 to the bank group, I believe.</p> <p>10:25 8 Q. Do you know the purpose of this document?</p> <p>10:25 9 A. No.</p> <p>10:25 10 Q. Were you involved in the preparation of this</p> <p>10:25 11 document?</p> <p>10:26 12 A. Not that I remember.</p> <p>10:26 13 Q. Who was the lender in the loan transaction?</p> <p>10:26 14 A. There were several banks involved in the bank</p> <p>10:26 15 group, even outside of the farming entities that had a</p> <p>10:26 16 separate bank group, so I wouldn't remember each of the</p> <p>10:26 17 banks involved.</p> <p>10:26 18 Q. Do you remember any of the names of the banks?</p> <p>10:26 19 A. BMO.</p> <p>10:26 20 Q. That's Bank of Montreal?</p> <p>10:26 21 A. Yes, Bank of Montreal. Chase was a small</p> <p>10:26 22 lender as part of the bank group. Bank of the West was a</p> <p>10:27 23 lender in the bank group for a period of time. That's</p> <p>10:27 24 all I can remember right now.</p> <p>10:27 25 Q. Did you organize documents and send them to the</p>

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<p>10:27 1 banks?</p> <p>10:27 2 A. I have.</p> <p>10:27 3 Q. Was this a document that you did so?</p> <p>10:27 4 A. I believe this was one of the loans, one of the</p> <p>10:27 5 documents in the loan, because I would have collected</p> <p>10:27 6 them and had signatures, especially as it related to</p> <p>10:27 7 Mark McCormick. I had to organize the documents and</p> <p>10:27 8 relayed it to the loan doc requirements of the bank in</p> <p>10:27 9 how they needed to be presented, and organized, and then</p> <p>10:27 10 get the signatures, the notaries, reorganize them and</p> <p>10:27 11 send them back.</p> <p>10:27 12 Q. Did you ever have any communications with any</p> <p>10:27 13 representatives of any of the banks in connection with</p> <p>10:27 14 this document?</p> <p>10:27 15 A. I possibly could have. I have had bank</p> <p>10:27 16 communications in the past as part of the bank group.</p> <p>10:28 17 Q. And can you tell me, was that part of your</p> <p>10:28 18 responsibilities?</p> <p>10:28 19 A. Just -- I hate to be so candid, but as a</p> <p>10:28 20 scribe, I was really a scribe, purely administrative, or</p> <p>10:28 21 as corporate secretary, so if I needed to retain those</p> <p>10:28 22 records as a part of the corporate records, I would do</p> <p>10:28 23 that. I would also sign some of the documents as</p> <p>10:28 24 corporate secretary as needed, and then, again,</p> <p>10:28 25 collection, organization, and making sure they were</p>	<p>10:30 1 management team, and talked about opportunities. We were</p> <p>10:30 2 restructuring some of our teams, especially as it related</p> <p>10:30 3 to finance. We had some significant turnover, and that</p> <p>10:30 4 was a concern. Turnover in finance, in the accounting</p> <p>10:30 5 team, so that was a concern of the banks' at the time,</p> <p>10:30 6 and I remember speaking to that and talking about our</p> <p>10:30 7 recruiting efforts, and what we were trying to do there.</p> <p>10:30 8 Q. Who changed positions?</p> <p>10:30 9 A. Many. Whether it were cost accountants,</p> <p>10:30 10 whether it were CFOs, whether it were senior accountants,</p> <p>10:30 11 we had some turnover there.</p> <p>10:30 12 Q. And do you know what happened to your notes of</p> <p>10:30 13 the meeting?</p> <p>10:30 14 A. I don't. I wasn't at the company the day of</p> <p>10:30 15 the raid, the day of the Department of Justice</p> <p>10:31 16 investigation, the day of the raid, April 16th. I was</p> <p>10:31 17 still at home getting ready to leave for work, so my</p> <p>10:31 18 office in Lemoore was -- I was transitioning between two</p> <p>10:31 19 offices, the Lemoore and the Monterey facilities, so my</p> <p>10:31 20 offices were gone through.</p> <p>10:31 21 Q. Now, these packages that you discussed sending</p> <p>10:31 22 to the banks, was there a log kept of outgoing packages</p> <p>10:31 23 from SK Foods?</p> <p>10:31 24 A. I don't know if there's a log. I know there is</p> <p>10:31 25 a binder of records that were maintained for each of the</p>
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<p>10:28 1 handed over to the CFO and organized so that she could --</p> <p>10:28 2 Shondale Seymour at the time, or, you know,</p> <p>10:28 3 Mark McCormick, working in conjunction with the two of</p> <p>10:28 4 them. They would create binders and then they would keep</p> <p>10:28 5 those binders in their office.</p> <p>10:28 6 Q. Did you ever attend any meetings with</p> <p>10:28 7 representatives of any of the banks?</p> <p>10:29 8 A. I have.</p> <p>10:29 9 Q. And do you recall who attended on behalf of the</p> <p>10:29 10 banks?</p> <p>10:29 11 A. There was one meeting in San Francisco where</p> <p>10:29 12 all of the banks were represented collectively, and that</p> <p>10:29 13 was in an effort to obtain, I believe, either an</p> <p>10:29 14 extension of a current loan or a separate loan</p> <p>10:29 15 altogether.</p> <p>10:29 16 Q. Do you recall the approximate date of that</p> <p>10:29 17 meeting?</p> <p>10:29 18 A. I don't. It would be probably 2008.</p> <p>10:29 19 Q. What was the purpose of your attending the</p> <p>10:29 20 meeting?</p> <p>10:29 21 A. As an officer.</p> <p>10:29 22 Q. Were you taking any minutes of the meeting?</p> <p>10:29 23 A. I did not take minutes. I did take notes, if I</p> <p>10:29 24 remember, and I did give a short presentation as it</p> <p>10:29 25 related to -- I presented the org chart for the executive</p>	<p>10:31 1 loans, and the binder of records were maintained in the</p> <p>10:31 2 CFO office in Lemoore, to my knowledge. That's where I</p> <p>10:31 3 recall them being.</p> <p>10:31 4 Q. Were you ever asked to backdate any documents</p> <p>10:32 5 during your employment at SK Foods?</p> <p>10:32 6 MS. WOODRUFF: Objection. Vague and ambiguous</p> <p>10:32 7 argumentative.</p> <p>10:32 8 BY MR. CHRISTMAS:</p> <p>10:32 9 Q. Do you know what backdate means?</p> <p>10:32 10 A. So if a date were today, to backdate it three</p> <p>10:32 11 days ago?</p> <p>10:32 12 Q. Or any period of time, yes.</p> <p>10:32 13 A. I don't recall specific backdating incidents,</p> <p>10:32 14 but I do remember leaving a date blank so that the day of</p> <p>10:32 15 the close all of those dates could be reported and</p> <p>10:32 16 accounted for, except where a notary was involved, and of</p> <p>10:32 17 course those dates were recorded on that day.</p> <p>10:33 18 Q. Could I ask you to go back to Exhibit 42.</p> <p>10:33 19 A. Okay.</p> <p>10:33 20 Q. As you saw, the dates of these two e-mails are</p> <p>10:33 21 April 1, 2008 and April 2, 2008, and the discussion in</p> <p>10:33 22 the e-mail is dates being November 1, 2007 or November 1,</p> <p>10:33 23 2006.</p> <p>10:33 24 Do you recall any instances where, using your</p> <p>10:33 25 definition of "backdating," whether either period of</p>

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<p>10:33 1 time, either back from April, 2008 to November 1, 2007, 10:34 2 or the longer period to 2006, whether that was ever done? 10:34 3 MS. WOODRUFF: Objection. Vague and ambiguous, 10:34 4 unintelligible, argumentative. 10:34 5 THE WITNESS: I don't even remember what 10:34 6 resolutions these were. 10:34 7 BY MR. CHRISTMAS: 10:34 8 Q. But one period of time is approximately five to 10:34 9 six months. Do you have a recollection of any documents 10:34 10 being backdated -- 10:34 11 A. I don't -- 10:34 12 MS. WOODRUFF: Objection. Vague and ambiguous, 10:34 13 argumentative. As to backdating, it implies something 10:34 14 illegal. 10:34 15 MR. CHRISTMAS: Can I finish the question. 10:34 16 Can you read back the question, please. 10:34 17 (The question was read.) 10:34 18 MS. WOODRUFF: To -- 10:34 19 MR. CHRISTMAS: Can I finish, please? 10:34 20 MS. WOODRUFF: That sounded like you finished 10:34 21 the question. 10:34 22 MR. CHRISTMAS: No, I didn't. 10:34 23 BY MR. CHRISTMAS: 10:34 24 Q. -- to that period, extent of time. 10:34 25 MS. WOODRUFF: Objection. Vague and ambiguous,</p>	<p>10:36 1 A. I don't know. Do you have anything specific? 10:36 2 I don't know. 10:36 3 Q. Using your definition of backdating, if a 10:36 4 document were executed in April of 2008 with a date of 10:36 5 November 1, 2006, would that meet your definition of 10:36 6 backdating? 10:36 7 A. I don't even know how to answer that. I don't 10:36 8 know what you're referring to. 10:36 9 Q. I'm just saying if a document were executed in 10:36 10 April of 2008 with a date of November 1, 2006, would you 10:37 11 consider that backdating? 10:37 12 MS. WOODRUFF: Objection. Calls for a legal 10:37 13 conclusion, vague and ambiguous, incomplete hypothetical 10:37 14 THE WITNESS: Yeah, I think I would need a 10:37 15 break to call my attorney, Steve Sutro. I'm not even 10:37 16 sure. I don't even know how I should answer that. 10:37 17 MR. CHRISTMAS: We can reserve that question. 10:37 18 There may be other things you want to talk to him about. 10:37 19 If you're not comfortable without your counsel, answering 10:37 20 a question, I think that that's appropriate. 10:37 21 THE WITNESS: Yeah. 10:37 22 MR. NUTI: Is it a good time for a break? 10:37 23 MR. CHRISTMAS: Yeah. 10:37 24 (Recess taken.) 10:48 25 MR. CHRISTMAS: This is 68.</p>
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<p>10:34 1 argumentative, assumes facts not in evidence. 10:34 2 THE WITNESS: I agree. I don't know what you 10:35 3 mean by five or six months. It says November 1st of 10:35 4 2006, versus November 1st of 2007, which would have been 10:35 5 a year difference. 10:35 6 BY MR. CHRISTMAS: 10:35 7 Q. Okay. Let's break them down. If the document 10:35 8 was executed in April of 2008, but dated as of 10:35 9 November 1, 2007, that is approximately six months. 10:35 10 Were you ever involved in -- rephrase that. 10:35 11 Did you ever see any documents that were executed six 10:35 12 months after their date? 10:35 13 A. I don't recall anything like that that I can 10:35 14 remember, and I don't recall specifically even what these 10:35 15 resolutions were. 10:35 16 Q. Okay. I'm just asking about a practice, if 10:35 17 any, of backdating documents, and I'd ask you the same 10:35 18 question. Did you ever see any documents that were, 10:35 19 using your definition, backdated approximately 18 months? 10:35 20 MS. WOODRUFF: Objection. Vague and ambiguous, 10:35 21 argumentative, assumes facts not in evidence as to 10:36 22 backdating. Documents can be effected at a time they're 10:36 23 not dated. 10:36 24 BY MR. CHRISTMAS: 10:36 25 Q. You can answer.</p>	<p>10:48 1 (Exhibit 68 was marked for identification.) 10:48 2 BY MR. CHRISTMAS: 10:51 3 Q. Ms. Crist, the court reporter has handed you 10:51 4 Exhibit 68 to your deposition. Have you ever seen this 10:51 5 document? 10:51 6 A. No, I have not. 10:52 7 MR. CHRISTMAS: This is 69. 10:52 8 (Exhibit 69 was marked for identification.) 10:52 9 BY MR. CHRISTMAS: 10:52 10 Q. Ms. Crist, the court reporter has handed you 10:52 11 Exhibit 70 to your deposition. Have you ever seen this 10:52 12 document? 10:52 13 MR. SHEAHAN: 69. 10:52 14 MR. CHRISTMAS: I'm sorry, 69. 10:52 15 THE WITNESS: No, I have not. 10:52 16 MR. CHRISTMAS: This is 70. 10:52 17 (Exhibit 70 was marked for identification.) 10:52 18 BY MR. CHRISTMAS: 10:52 19 Q. Ms. Crist, the court reporter has handed you 10:52 20 Exhibit 70 to your deposition. Have you ever seen this 10:52 21 document? 10:52 22 A. No, I have not. 10:53 23 MR. CHRISTMAS: This is 71. 10:53 24 (Exhibit 71 was marked for identification.) 10:53 25 ///</p>

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<p>10:53 1 BY MR. CHRISTMAS:</p> <p>10:53 2 Q. And likewise, Ms. Crist, the court reporter has</p> <p>10:53 3 handed you Exhibit 71. Have you ever seen this document?</p> <p>10:53 4 A. No, I have not.</p> <p>10:53 5 Q. Moving off the documents, are you aware of any</p> <p>10:53 6 changes in ownership of the Australian and New Zealand</p> <p>10:53 7 companies that were effected during your employment with</p> <p>10:53 8 SK Foods?</p> <p>10:53 9 A. Not that I'm aware of or that I can remember.</p> <p>10:54 10 Q. Do you recall having any discussions with</p> <p>10:54 11 anyone about the subject of an accounting rule called Fin</p> <p>10:54 12 46?</p> <p>10:54 13 A. The only discussions I had were with Nick that</p> <p>10:54 14 one time that I can remember being in New Zealand. As I</p> <p>10:54 15 said, they were having a meeting, talking about the</p> <p>10:54 16 business, and capital, and I remember them giving Scott a</p> <p>10:54 17 presentation and Stephanie and I being a part of that,</p> <p>10:54 18 and then Nick, you know, going through this audit and</p> <p>10:54 19 having some questions.</p> <p>10:54 20 Q. Is that the only instance you recall of Fin</p> <p>10:54 21 46 --</p> <p>10:54 22 A. That I can remember.</p> <p>10:54 23 Q. -- being discussed?</p> <p>10:54 24 Do you know what Fin 46 is?</p> <p>10:54 25 A. No, I do not.</p>	<p>10:56 1 payables, we would review receivables, would talk about</p> <p>10:57 2 immediate business needs for things that needed to be</p> <p>10:57 3 today immediately, like payroll. That was my role. I</p> <p>10:57 4 wanted to make sure payroll got funded each week,</p> <p>10:57 5 especially during the processing season, because our</p> <p>10:57 6 payroll dollars went ten times over versus what the</p> <p>10:57 7 other, non-seasonal time of the year. And that was</p> <p>10:57 8 toward the end when, you know, our finances became</p> <p>10:57 9 severely strained.</p> <p>10:57 10 Q. That was in late 2008, or was it in --</p> <p>10:57 11 A. Late 2008, and then all the way until the end.</p> <p>10:57 12 So I was a part of that group. Not part of that group,</p> <p>10:57 13 but on that team, so I would present "This is what our</p> <p>10:57 14 payroll dollars look like this pay period, this is what</p> <p>10:57 15 benefits look like this pay period."</p> <p>10:57 16 Again, we needed two check signers, so I would</p> <p>10:57 17 sign checks if I were available. We would also sign the</p> <p>10:57 18 weekly -- what was it called? If Shondale Seymour</p> <p>10:58 19 weren't available, or Mark McCormick, I had the authority</p> <p>10:58 20 to sign -- I can't remember what it's called. We had a</p> <p>10:58 21 weekly something that we needed to sign.</p> <p>10:58 22 Q. Did you ever have any communications with the</p> <p>10:58 23 accounting firm Moss Adams?</p> <p>10:58 24 A. I did.</p> <p>10:58 25 Q. And in what connection did you have those</p>
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<p>10:54 1 Q. You mentioned earlier you had some occasion to</p> <p>10:55 2 be in communication with representatives of the banks.</p> <p>10:55 3 Do you remember any individuals' names with whom you were</p> <p>10:55 4 in communication?</p> <p>10:55 5 A. Oh, my goodness. There were a few.</p> <p>10:55 6 Q. But you don't recall their names?</p> <p>10:55 7 A. I remember one bank representative from BMO,</p> <p>10:55 8 her name is Betsy. And there was another bank, like,</p> <p>10:55 9 customer service rep that we communicated with from time</p> <p>10:55 10 to time as it related to bank services, and I can't</p> <p>10:55 11 remember his name.</p> <p>10:55 12 There were a few. I don't recall.</p> <p>10:55 13 Q. Were your duties and responsibilities</p> <p>10:56 14 encompassing of needing to communicate with</p> <p>10:56 15 representatives of the bank group?</p> <p>10:56 16 A. I did from time to time.</p> <p>10:56 17 Q. And I know you had several roles.</p> <p>10:56 18 A. I did.</p> <p>10:56 19 Q. What role or roles was this in furtherance of?</p> <p>10:56 20 A. I was a check signer, so from time to time I</p> <p>10:56 21 would sign checks. There was a third-party brought in</p> <p>10:56 22 from the bank group to oversee the financial operations,</p> <p>10:56 23 so they were very much -- they were on site the entire --</p> <p>10:56 24 and I don't remember their name right now. It was a</p> <p>10:56 25 third party that was brought in and we would review</p>	<p>10:58 1 communications?</p> <p>10:58 2 A. Supporting audits.</p> <p>10:58 3 Q. How did you support audits?</p> <p>10:58 4 A. I supported audits based on if they needed</p> <p>10:58 5 records to support the audit. Could be various business</p> <p>10:58 6 records. I was interviewed from time to time, just</p> <p>10:58 7 employment practices as it related to benefits, lines of</p> <p>10:58 8 insurance, coverage, various things.</p> <p>10:58 9 Q. With whom did you have communications at Moss</p> <p>10:59 10 Adams?</p> <p>10:59 11 A. The auditor that came out.</p> <p>10:59 12 Q. Recall a name?</p> <p>10:59 13 A. No, I don't.</p> <p>10:59 14 Q. Was it a Mr. Nutley?</p> <p>10:59 15 A. Possibly. I don't know.</p> <p>10:59 16 Q. And same questions with regard to the</p> <p>10:59 17 accounting firm of Stoughton Davidson?</p> <p>10:59 18 A. It would have been along the same lines.</p> <p>10:59 19 Q. You supported the audit?</p> <p>10:59 20 A. I did.</p> <p>10:59 21 Q. Do you recall who at Stoughton Davidson you</p> <p>10:59 22 were in communication with?</p> <p>10:59 23 A. I don't.</p> <p>10:59 24 Q. Was it a man or a woman?</p> <p>10:59 25 A. I don't even remember.</p>

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LISA CRIST - 8-17-2011

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<p>10:59 1 MR. CHRISTMAS: Okay. I have no further direct 10:59 2 questions of this witness. 10:59 3 EXAMINATION BY MR. NUTI 10:59 4 Q. I'm Greg Nuti, I represent Brad Sharp. 10:59 5 A. Hi. 10:59 6 Q. Have you talked to Scott Salyer? 10:59 7 A. I have not. 10:59 8 Q. When was the last time? 10:59 9 A. Not since the filing of bankruptcy and going 11:00 10 through. I saw him at a couple court hearings for the 11:00 11 bankruptcy estate, and that's been it. 11:00 12 Q. Have you spoken to any of his lawyers? 11:00 13 A. I have. 11:00 14 Q. When? 11:00 15 A. I just recently spoke to John Keker last week. 11:00 16 Q. And that's in connection with? 11:00 17 A. The criminal investigation. 11:00 18 MS. WOODRUFF: And I'm going to object to this 11:00 19 line of questioning. This has nothing to do with the 11:00 20 2004 exam, and you're not to go -- that's way -- 11:00 21 MR. NUTI: I just asked what it was about. 11:00 22 THE WITNESS: And I can't -- my attorney told 11:00 23 me anything related to the criminal case, absolutely 11:00 24 hands off. 11:00 25 ///</p>	<p>11:02 1 with your counsel. 11:02 2 THE WITNESS: Okay. 11:02 3 MR. CHRISTMAS: I assume, like most people -- 11:02 4 THE WITNESS: I want that right, yes. 5 (The deposition of LISA CRIST was concluded at 6 11:02 a.m.) 7 8 9 ---oOo--- 10 I declare under penalty of perjury under the 11 laws of the State of California that the foregoing is 12 true and correct. 12 Executed at , California on , 13 2011. 14 15 LISA CRIST 16 17 18 19 20 21 22 23 24 25</p>
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<p>11:00 1 BY MR. NUTI: 11:00 2 Q. Anybody else besides John Keker? 11:00 3 A. No. 11:00 4 Q. Are you aware that Scott traveled to Australia, 11:00 5 New Zealand I guess right after the bankruptcy was filed 11:00 6 in May, 2009? 11:00 7 A. Possibly. He was out of touch for quite a 11:00 8 period of time during the bankruptcy, filing of the 11:01 9 bankruptcy, after the bankruptcy. I don't know the 11:01 10 extent of his travels. 11:01 11 Q. Well, he did travel to New Zealand and 11:01 12 Australia right around May 13th, 2009. Do you know 11:01 13 anything about that trip or why he went down there? 11:01 14 A. I do not. 11:01 15 MR. NUTI: I don't have any other questions. 11:01 16 MR. CHRISTENSEN: No questions. 11:01 17 MS. WOODRUFF: I have no questions. 11:01 18 THE WITNESS: Great. Am I free to go? 11:02 19 (Discussion off the record.) 11:02 20 MR. CHRISTMAS: Ms. Crist, since your counsel 11:02 21 is not here to advise you, but he probably will advise 11:02 22 you, you have the right to review, request and sign your 11:02 23 deposition transcript and provide us with any corrections 11:02 24 if anything was taken down incorrectly. So you don't 11:02 25 have to make that decision now, but I will be in contact</p>	<p>1 STATE OF CALIFORNIA))) 2 COUNTY OF FRESNO) 3 4 I, AMANDA SCOTT, Certified Shorthand Reporter 5 licensed in the State of California, License No. 13226, 6 do hereby certify that the foregoing proceedings was 7 reported by me and was thereafter transcribed under my 8 direction into typewriting; that the foregoing is a full, 9 complete and true record of said proceeding. 10 I further certify that I am not of counsel or 11 attorney for either or any of the parties in the 12 foregoing proceeding and caption named, or in any way 13 interested in the outcome of the cause named in said 14 caption. 15 In witness whereof, I have hereunto set my hand 16 and affixed my seal this day. 17 Date: August 25, 2011 18 19 20 21 22 AMANDA SCOTT, CSR #13226 23 24 25</p>

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Plf's - Deft's Ex 42
Depo of Lisa Crist
Date 8/17/11
AMANDA SCOTT, CSR

From: Gary Perry Law <gary@garyperrylaw.com>
Sent: Wednesday, April 2, 2008 6:37 AM
To: Lisa Crist <lisac@skfoods.com>
Subject: Re: SKF Australia

Let me confirm with Wayne. Gary

Gary Perry

gary@garyperrylaw.com

-----Original Message-----

From: "Lisa Crist" <lisac@skfoods.com>

Date: Tue, 1 Apr 2008 19:25:03

To: <gary@garyperrylaw.com>

Subject: SKF Australia

Hello Gary,

I'm here in NZ with Nick Frankish and we are questioning the dates of the resolutions, should they be November 1, 2007 vs. November 1, 2006? Nick mentioned talking about it in 2007 to get in front of the FIN 46 requirements.

I just wanted to double check before Scott signs them. If indeed the dates should reflect 11/1/07, I can make the changes.

Thank you for your clarification,

Lisa

Lisa Crist

EVP of Administration

SK Foods Group

1175 19th Ave

Lemoore, CA 93245-0160

(559) 924-6544 - Office

(559) 924-0178 - Fax

www.skfoods.com: <<http://www.skfoods.com>>

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